

Henry Clark

BRIEFING BOOK

BACKGROUND INFORMATION

HOUSE SELECT COMMITTEE ON ASSASSINATIONS

HOUSE SELECT COMMITTEE ON ASSASSINATIONS
ALBANY, NEW YORK, 1978

At the current time the Congressional Inquiry Unit, Records Management Division, is preparing a survey in terms of the number of linear feet of material processed pursuant to captioned Committee's requests and is expected to have this survey completed before December, 1978. However, as of October 31, 1978, the total request letters received from this Committee since December 3, 1976, number 300. Most of these letters listed numerous requests.

The processing of this Committee's requests has been handled by the Congressional Inquiry Unit, Records Management Division, which has added or taken away personnel, depending on the amount of work necessary and has had as many as seventy-five employees working full time on this Committee's requests.

The Freedom of Information Act (FOIA) Branch, Records Management Division, has furnished the Committee a total of 98,755 pages comprising the FBI Headquarters' file on the Kennedy assassination investigation and the Ruby and Oswald files. FOIA figures reveal that as of September 10, 1978, a total of \$294,584 was spent just on the processing of the Kennedy assassination file for release to the public.

Recently a subsequent release was made of 40,007 pages constituting the Dallas FBI Office files regarding the Kennedy assassination investigation. We are presently processing our New Orleans Office Kennedy assassination investigative files for release.

In the "Markin" investigation, a total of 44,873 pages has been processed and released.

Possible Questions From Committee Members

Q. Have you discussed with Mr. Adams the allegation that he is a racist? If so, what was his response?

Mr. Adams has stated that Mr. Murtaugh's characterization of him as a racist is absolutely untrue and the only basis Mr. Murtaugh gave for his belief was a hearsay statement allegedly made by his Special Agent in Charge, Mr. Joseph Ponder, in the early 1960's. Mr. Murtaugh made the same charges before the House Select Committee on Intelligence in 1975 at which time Mr. Adams categorically denied having made any such statement and stated that the FBI's record of affirmative action in recruiting Black employees belied any such statement. Mr. Adams points out that he has vigorously supported the FBI's equal employment opportunity efforts, personally approved a letter of commendation of Mr. Murtaugh in 1966 and an incentive award in 1967 for Mr. Murtaugh, both in connection with his recruitment efforts. Further, Mr. Adams was appointed Assistant Personnel Officer in 1961 and Personnel Officer in 1965, holding such position until 1971. The total number of Black employees on the FBI rolls rose from 51 in 1961 to 1487 in 1970. A Bureau spokesman, Homer Boynton, has contacted Mr. Ponder, who categorically denies Mr. Adams made the statement attributed to him and denies having made the statement attributed to him by Mr. Murtaugh.

Mr. STANTON. Has it ever provided refuge for fugitives from justice?

Mr. RASKIN. No, sir.

Mr. STANTON. Thank you.

The Chair will yield to Mr. Dellums.

Mr. DELLA MS. Thank you, Mr. Chairman.

Mr. MURTAGH. Unfortunately I was not able to be here this morning, and I would like to take the opportunity to ask you a few questions, perhaps in a different tone and certainly of a different nature than those of the distinguished ranking minority member.

Has the FBI tended to screen out certain racial groups and religious groups?

Mr. MURTAGH. I am sorry, I didn't hear the question.

Mr. DELLA MS. Has the FBI tended, over the years, to screen out certain racial and religious groups?

Mr. MURTAGH. Racial and religious groups. I don't understand what you mean by "screen out." In hiring?

Mr. DELLA MS. Yes.

Mr. MURTAGH. There is no question about it. The selection process has been designed in such a way that a person could not be hired as an agent unless he could get by an interview with a person who was already in the position of, say, an SAC and the screening was done along the lines of "if you look the part, if you are the type of person that I am, then we will take you; and if you are not, we won't."

I have had personal experience in a situation where an Air Force captain came into the Bureau—I mean was asking for employment—and the assistant in charge in Atlanta called me in. I had been assisting in screening some of these people. He asked me to go out and take a look at this fellow, and I went out and looked at him, and I went back in and he said, "Do you see anything wrong with him?" I said, "No. I can't see anything wrong."

He said, "Didn't you notice that he has eyes like Robert Mitchum? His eyelids fall down over his eyes." I said, "Yes. I noticed that." He said, "Well, I would be afraid to recommend him." He said, "I got transferred one time for recommending somebody that had acne on their face."

I give that as an illustration of the sort of qualifications that they looked into.

Mr. DELLA MS. Thank you, Mr. Murtagh.

My next question is: Has this policy of exclusion had consequences or affected the results or policies of the FBI?

Mr. MURTAGH. I think it is the whole problem because the direction and the attitudes that control the thinking in the FBI are the attitudes of those that are hired.

Now, Mr. Adams here this morning was mentioning that they were having trouble recruiting minority agents. I happened to know of a situation where I recruited minority people in Atlanta for clerical positions at the request of the SAC—several hundred of them over a period of 4 years—and I recruited them very vigorously.

My job was merely to get them, approve them for investigation, and then other agents conducted the investigations. We got to the point where we had a hundred or more finished investigations at the Bureau.

The boss at that time was Joe Ponder, the boss in Atlanta. He came

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to the Bureau for his yearly conference and came back to me, came up to my desk, sat down and said, "Art, I was at the Bureau last week, and I went around the horn and talked to all the supervisors until I got to Adams, and Adams spoke to me and said, 'One way or another, you have got to stop Murtagh's movement'—meaning Murtagh's blacks—'coming up to the Bureau to work.' And he says, 'If you don't stop it, you are going to get those niggers back down South to work in your office.'"

Mr. DELLMs. Thank you, Mr. Murtagh. My next question is: Does the FBI have a political philosophy, and, if so, do the agency's political views affect its investigation of blacks, browns, reds, yellows, the Socialist Workers Party, and antiwar movement, and other so-called dissident groups?

Mr. MURTAGH. The emphasis on all the intelligence investigations is to hit the left hard and to ignore the right until they do enough damage, as they did in the sixties in the Klan situation, so that the Bureau is forced into investigating by the press.

I went into Birmingham in the Birmingham bombing situation and the trouble in Birmingham with a group of agents in the early sixties and the Bureau at that time—the *Brown* decision came down in 1954 and by 1962 they had nothing on the Klan in Alabama other than a list of first names and that sort of thing. They had no penetration whatsoever. And if you contrast that with the intensive investigations that they made of the black units—and I did them myself, so I know what I am talking about—the black units in the Atlanta area during the sixties when certain blacks became militant, there is no comparison whatsoever of the effort put in, the agents' time, the amount of agents assigned to the job, the thoroughness with which the investigations were worked in connection with black militants as opposed to the Ku Klux Klan.

The only time they investigated the Klan was when there was actual murder and the press forced them into it.

Mr. DELLMs. Thank you very much for that illuminating testimony, Mr. Murtagh.

Mr. STANTON. The Chair recognizes the gentleman from Colorado.

Mr. JOHNSON. Thank you, Mr. Chairman.

Mr. Murtagh, this morning you said, with respect to the call you had from a "Colonel Klink" about the Andrew Young election, that you thought that the information—his handwriting sample, I believe it was—was going to be used in an unrecorded counterintelligence operation to destroy Mr. Young's chances of being elected.

Was that anything that you know about personally, or is that a speculation on your part? Do you know of any kind of counterintelligence operation against Mr. Young or any other candidate for Congress?

Mr. MURTAGH. That I know of personally, myself?

Mr. JOHNSON. Yes, sir; that you know of.

Mr. MURTAGH. No; I know of another situation involving information that was used in that manner, or at least Arthur DeLoach told us it was, in which they picked up some information on a midwestern—I wouldn't mention his name, but a midwestern Senator who was in a hit-and-run accident situation.

He told us this in a class with 50 agents present here in Washington the week that Kennedy was killed.

APPENDIX III.—FBI RESPONSES TO STATEMENTS MADE
BY NONBUREAU WITNESSES DURING NOVEMBER 18,
1975, HEARING

OFFICE OF THE DIRECTOR



UNITED STATES DEPARTMENT OF JUSTICE
FEDERAL BUREAU OF INVESTIGATION

WASHINGTON, D.C. 20535

November 28, 1975

RE: TESTIMONY OF ARTHUR MURTAGH BEFORE
THE SELECT COMMITTEE ON INTELLIGENCE,
NOVEMBER 18, 1975

Among the allegations made by Murtagh during the November 18, 1975, hearings before the HSC was that at one time he was asked to obtain through his informants handwriting samples of Andrew Young of Atlanta and other assistants of Dr. Martin Luther King in the Southern Christian Leadership Conference (SCLC), for what he believed was to be used for illegal purposes.

In 1973, the time Murtagh originally made this allegation, a check of FBI Headquarters files as well as those of the Atlanta Office of the FBI was made. A communication was directed to FBI Headquarters by the Atlanta Office on August 13, 1973, which advised that a review of files disclosed no information to support Murtagh's allegation and that personnel, who would be knowledgeable of such a request of Murtagh, had no recollection of any such request. FBI Headquarters files did not contain information which would substantiate Murtagh's allegation.

Mr. Murtagh alleged the FBI used illegal activity to compromise the "movement" and that Mr. Hoover had no sympathy with any "racial movement." Presuming that Murtagh is referring to the Civil Rights Movement, our investigations were aimed at determining the nature and extent of communist influence in the racial movement and not to deter the movement itself. The FBI promptly and vigorously handled investigations relating to Civil Rights violations and our excellent record in this area speaks for itself.

Mr. Murtagh alleged that Mr. Hoover threw a veil of secrecy over the Bureau's internal operations making it impossible for the public or Congress to know of Bureau operations.



Testimony of Arthur Murtagh before the Select
Committee on Intelligence, November 18, 1975

Mr. Murtagh is well aware that annual appropriations were based on Mr. Hoover's testimony before Congressional Committees which were at liberty to examine all areas of the Bureau's operations in conducting their inquiry for budget justification. As members of Congress and representatives of the people, Committee members have always been in a position to know of the Bureau's internal as well as external operations and to make Congress and the general public aware of their observations within their prescribed mandate and subject to the rules of confidence.

Mr. Murtagh alleges that the Bureau uses harsh disciplinary measures. The standards of conduct of the FBI are based on and are in accordance with the Department of Justice Order 350-65 and the Code of Federal Regulations. Administrative action for failure to meet these known and established standards is handled promptly and fairly. No administrative action is ever taken without first obtaining an explanation from the employee involved. Disciplinary policies of the mid-1960s were no different than in previous decades and little different than at present. Mr. Murtagh's allegation that disciplinary measures had so eroded Agents' confidence in Mr. Hoover by the mid-1960s that the policy "tell the man nothing" reached the point where Bureau supervisors did not furnish Mr. Hoover with information that had come to their attention for fear of reprisal, is without factual basis, is not documented, and appears to be a matter of Murtagh's personal opinion.

Mr. Murtagh alleged Agents under Mr. Hoover had no avenue through which they could air grievances involving unethical or illegal practices. This is not true. If asked or required to take part in something illegal or unethical or outside the Agent's job description his obvious initial recourse would be to report same to the next higher supervisory authority. Since Murtagh insinuated that internal channels would not be responsive to accepting or forwarding such grievances, it must also be pointed out that Agents could always seek recourse by writing or going to higher authority, such as the Attorney General.

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Testimony of Arthur Murtagh before the Select
Committee on Intelligence, November 18, 1975

Mr. Murtagh alleges that the FBI has carefully selected Agent personnel who were politically disposed to the right.

The FBI is excepted from the competitive Civil Service in our employment of both Special Agents and clerical personnel. Our employees are selected based on educational qualifications, personal interviews, appropriate testing and rigid background investigations. No instructions have ever been issued to determine the political affiliation of applicants for employment with the FBI. Political affiliation or persuasion is not now and has never been a prerequisite for employment.

Additionally, Mr. Murtagh alleges that thousands of Agents have been forced to leave the Bureau in "utter disgust." This is not corroborated by the facts. Percentage comparison studies reveal that the turnover rate of Special Agents is consistently below that in the Federal Government and private industry. In the first place, large numbers of Agents have not resigned and no information has come to our attention that would in any way indicate that large numbers of Agents have resigned in "utter disgust."

He also suggests that either the salary scale for Special Agents should be reduced or that we should establish educational requirements to justify our high pay standards. The starting grade for a Special Agent in the FBI is GS-10. The U. S. Civil Service Commission has found this position to be correctly classified in grade GS-10, based on a thorough study of all pertinent background information including the educational, physical and other qualification standards for recruitment, training courses and facilities, examination of typical, practical case problems and a study of the scope of FBI jurisdiction and the numerous duties and responsibilities of Special Agent personnel. Classification standards for the criminal investigating series GS-1811 were revised in February, 1972, and information therein continues to support GS-10 as the entrance level for Special Agents.

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Testimony of Arthur Murtagh before the Select
Committee on Intelligence, November 18, 1975

Mr. Murtagh recommends that to insure against re-establishment of uncontrollable power within the Bureau that Agent selection be a legislative process so that future personnel would represent the full spectrum of American society instead of only a narrow segment as it now does.

Our current Special Agent complement is made up of a cross section of Americans representing all walks of life, races and creeds. All applications received are thoroughly reviewed and treated in a like manner without regard to an individual's station in life.

Equal opportunity is, and has been, an established policy of the FBI. The Bureau has applied an unqualified policy of considering each applicant for employment without regard to race or any other discriminatory factor. Over the years we have emphasized and reemphasized not only the need but the desire to attract minority applicants to our ranks in order to be representative of the American people and fulfill our responsibilities.

In support of his allegation that the FBI practiced institutional racism in hiring, Mr. Murtagh also attributed to Mr. (James B.) Adams of the FBI a statement to the effect that Murtagh's hiring of blacks for the Bureau's work force, would have to be stopped.

Mr. Adams categorically denies having made any such statement and the FBI's record of affirmative action in recruiting black employees belies any such statement.

Q: Have any Agent applicants been identified as racially prejudiced?

(DIVISION III RESPOND.)

FBIHQ is not aware of any Special Agent applicants having been identified as racially prejudiced.

Q. Has the FBI undertaken any positive means to insure that a racially prejudiced person would (1) not be hired, or (2) not be continued in his or her employment as an Agent of the FBI?

A. (1) The Agent selection process is designed to identify such a person through testing and interview techniques and investigation. If a racially prejudiced person were identified, that person would not be hired.

(2) If any Agent were found to demonstrate racial prejudice in the conduct of his official duties, that person would be dealt with in accordance with the specifics of the incident. All supervisors are instructed to be alert for such incidents.

Q. Do you have Agents in the FBI that may be characterized as "racist"?

A. Since I have been Director, no incident has come to my attention that would cause me to conclude that any Agent has officially acted in such a way as to demonstrate that a personal prejudice toward any race resulted in official activity that was illegal or otherwise unacceptable.

Your Committee has received testimony from SA James J. Rose. Although he stated he was personally prejudiced against Dr. King before becoming an FBI Agent, there is no evidence, to the FBI's knowledge, that such a personal prejudice against one man - not an entire race - caused SA Rose to officially act in an improper or illegal manner.

Q. Would you consider firing an Agent who demonstrated racial prejudice?

A. Termination of employment might become a viable option. It would depend on the individual circumstances.

QUESTION: Since the time of the Kennedy Assassination there have been many developments in the scientific field which might be of assistance in an investigation of a future assassination. We all are aware of the capabilities of the FBI Laboratory to assist in these investigations. Does the FBI have access to outside scientific experts in fields where the FBI does not have sufficient expertise to do examinations that might be of assistance in the assassination investigation?

ANSWER: The FBI Laboratory has immediate access to recognized scientific experts through contacts at Federal laboratories (over 180 in number) that permit us to obtain scientific expertise in virtually all disciplines. As examples, chemical and biological warfare matters can be handled through the U. S. Army Chemical Systems Laboratory at Edgewood, Maryland. In the situation of assassination of a national figure, we can obtain immediate assistance through the Armed Forces Institute of Pathology. Additionally, we have contacts with other laboratories at industrial and university levels that provide us with scientific expertise that may not be available in our Laboratory.

QUESTION: In the past the FBI has allowed supervisory personnel who were involved in the investigation of specific individuals to be also involved and to supervise investigations when those same individuals later become the victim of criminal activity. For example, Bureau supervisory personnel involved in the domestic intelligence investigation of Martin Luther King, Jr., were also involved in the Murkin investigation. Would you as Director allow this same practice to continue in the future?

ANSWER: I see no reason to preclude supervisory or Agent personnel involved in the legitimate investigation of a particular individual from later participation in an investigation where that individual becomes a victim of a criminal act. The knowledge of the activities and associates of the individual would be of great value in determining suspects and in assisting in the pursuit of the investigation to a logical conclusion.

Q. The Committee has learned that the FBI's reporting in the King investigation to the USDJ was superficial and untimely, and further that the general relationship between the USDJ and FBI during the King investigation would be characterized as poor and counterproductive. What would the case be today?

A. The FBI today enjoys an open and productive relationship with the USDJ. Reportings in all matters of mutual concern are as complete and timely as the exigencies of the cases permit. In the unfortunate event of such a major figure assassination case in the future, you may be assured that all avenues of communication between the FBI and USDJ would be open and constant.

Q. The Committee has learned that the FBI investigations into the deaths of President Kennedy and Dr. King may have suffered because the FBI assigned supervisory duties in both to many Agents as an adjunct to their normal duties. Would this happen today?

A. No -- supervisory assignments in any future investigation of such magnitude would exclude other duties.

Q. Would you authorize dissemination of information of a personal nature about an individual to persons outside the Federal Government?

A. I would, but only to satisfy the legitimate needs of law enforcement, as in the case of a fugitive investigation where dissemination of certain personal information may be expected to lead to the location and apprehension of the fugitive. As you know, the FBI is authorized by Public Law 95-624, (the Department of Justice Appropriation Authorization Act, Fiscal Year 1979), to exchange identification records with, and for the official use of, the duly authorized officials of the Federal Government, of States, cities, and other institutions.

QUESTION: What is the extent of FBI presence at locations that are going to be visited by the President?

ANSWER: The U. S. Secret Service has been mandated by statute with the primary responsibility to protect the person of the President. The FBI has also been authorized to provide protection to the President. Department of Justice Appropriation Authorization Act, Fiscal Year 1979, Section (8). Generally speaking, the FBI carries out its responsibility by consulting with Secret Service advance teams if the Secret Service so requests.

Further, upon request of the Secret Service, the FBI will provide manpower to assist in the protection of the President. In short, our physical presence will be dependent upon receiving a request for assistance from the Secret Service.

QUESTION: In March, 1978, the St. Louis Office of the FBI furnished information regarding a possible conspiracy in the King Assassination. This information concerned an offer of \$50,000 made to Russell Eugene Byers to kill Dr. King. This information was received by the ^{St. Louis Office of the} FBI in March, 1974, placed in an informant contact memorandum, and never disseminated or acted upon. What action did you take concerning this matter and what were the results.

ANSWER: I ordered an inquiry into this matter and directed that Agent personnel who handled this information be interviewed to determine reasons for the failure to act on or disseminate that information. The Agent who contacted the informant recalled receiving the information, had no recollection of having disseminated it, and stated his failure to do so was inadvertent. This Agent's supervisor did not recall the specific contact memorandum and could furnish no reason other than inadvertence as to why it had not been acted upon.

Since both of these Agents were retired, no administrative or disciplinary action was taken against them.

The Committee has been provided copies of all the documents concerning the inquiry into this matter.

QUESTION: How would you, as Director, consider the creation of another "Warren Commission" type of organization or a Special Prosecutor to investigate a future political assassination?

ANSWER: As you know, the FBI is vested with the responsibility for investigations of Presidential or other assassinations that might be political in nature. I believe that a trained and professional law enforcement institution is best able to conduct complicated and sensitive major investigations. ^{The FBI} This organization has the facilities and the expertise to organize and administer complicated investigations of this type. This is evidenced by the recent investigation into the assassination of Orlando Letelier which was, of course, political in nature.

The creation of an organization similar to the Warren Commission might be desirable to review the results and the methods of a major political assassination investigation. It is my opinion, however, that the FBI, working closely with the Department of Justice and utilizing all the tools available to us, is best able to investigate major political assassinations and assassination attempts.

The question of a Special Prosecutor is one that would be more appropriately answered by Deputy Attorney General Benjamin Civiletti who will appear before the Committee. However, I would like

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to point out to you that the FBI and the Criminal Division in the Department of Justice work very closely together on a day-to-day basis, and, in the event of a major political assassination, we are ready to immediately involve ourselves and bring all our resources to bear to bring the matter to a successful conclusion.

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FOIPA DELETED PAGE INFORMATION SHEET

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- ☐ Deleted under exemption(s) _____ with no segregable material available for release to you.
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But, of course, an assault can also be committed merely by putting another in apprehension of harm whether or not the actor actually intends to inflict, or is capable or inflicting that harm." Ladner v. United States, 358 U.S. 169, 177 (1958). Proof of this form of assault requires establishment of a reasonable apprehension of the immediate application of force to the victim. In a recent case brought under 18 USC 111, the court properly granted a judgment of acquittal where the evidence showed only a confrontation between the victim and defendant which was ended by the defendant's saying in effect "you've had your warning, we'll get you." While there was a background of previous violence in the case from which an implication of force could be found, absent some additional circumstance with words alone carry an insufficient connotation of force. In addition the force, if any, was for application in the future, not immediately. Accordingly, at best the defendant's acts were a mere threat, conduct not generally covered by Federal law (but see e.g. 18 USC 372, 876). Note also that a condition in an offer of violence may negate the element of apprehension. For an excellent discussion of this concept see Watts v. United States, 402 F. 2d 676, 680 App. D.C. (1968) reversed on other grounds, 394 U.S. 705 (1969).

Unlike, 18 U.S.C. 1751, the assault provision of this statute divides assaults into two categories, those that result in personal injury and all others. If personal injury occurs then the penalty is a maximum of ten years imprisonment and a fine of \$10,000. In all other cases the maximum penalty is a maximum of one year imprisonment and a fine of \$5,000. Undoubtedly, the injury cited would have to be to the Member of Congress and not a third party who may be unfortunate recipient of a blow aimed at a Congressman.

From the debate on the Senate floor, it is apparent that Senator Ervin's motion to amend this section in this matter, was prompted by his desire to exclude simple assaults from the higher penalty provision. 116 Cong. Rec., P. S. 17, 519 (Daily Ed. 10/8/70). He suggested that if a man strikes at a Member of Congress with his fist without landing the blow, or does strike him with his open hand then he should be guilty of the lesser offense. 116 Cong. Rec., Ibid. Of course, if a Congressman is injured by the open hand, more than just momentary pain, then the higher penalty could be sought in that case.

As the statute does not provide for aggravated assaults, involving use of deadly or dangerous weapons without inflicting personal injury, applicability of the attempted homicide provision should be considered in those cases wherein the penalty for simple assault appears unsuitable.

6. Federal Investigative and Prosecutive Jurisdiction;
18 U.S.C. 351 (f)

"If Federal investigative or prosecutive jurisdiction is asserted for a violation of this section, such assertion shall suspend the exercise of jurisdiction by a State or local authority, under any applicable State or local law, until Federal action is terminated."

When and if Federal investigative or prosecutive jurisdiction is asserted, this provision suspends State or local jurisdiction in cases of possible violation of 18 U.S.C. 351, until all Federal action is terminated. This is within the powers delegated to Congress under the Constitution, as it has long been established that the enforcement of state laws which interfere with the protection of a dominant Federal interest in the same subject, as we have here, can be suspended by Federal law. See Pennsylvania v. Nelson, 350 U.S. 497, 504-505 (1956).

Although this section suspends state action, it does not prevent the states from cooperating with Federal authorities in an investigation of violations of the act. See 18 U.S.C. 351 (g). In addition, state action is only suspended until the Federal action is terminated.

Conflicts of jurisdiction resulting from the commission of an independent state offense, such as the wounding of a state official, incidental to an offense against a Member of Congress, are to be resolved on a case-by-case basis.

7. Investigative Responsibility; 18 U.S.C. 251 (g)

"Violations of this section shall be investigated by the Federal Bureau of Investigation. Assistance may be requested from any Federal, State, or local agency, including the Army, Navy, and Air Force, any statute, rule, or regulation to the contrary notwithstanding."

This section makes it clear that the Federal Bureau of Investigation shall have investigative jurisdiction over violations of the act, and may avail itself of the assistance of any Federal, State, or local agency, or the military. The purpose of this amendment is to make investigations under the act the fixed responsibility of one agency having the necessary resources and experience to conduct such investigations.

The provision also overcomes the effect of 18 U.S.C. 1385, which generally prohibits the use of any part of the Army or Air Force as a posse commitatus or otherwise to execute the laws.

SECTION 89.

ASSAULTING OR KILLING OF FEDERAL OFFICERS;
CONGRESSIONAL ASSASSINATION STATUTE

STATUTES - ASSAULTING FEDERAL OFFICERS (AFO)

Title 18, USC, Sections 111, 1114, and 2232.

9-1.1 Elements

Assaulting or Killing of Federal Officers, Title 18, USC, Sections 111, 1114, and 2232.

(1) That the defendant assaulted or killed the Federal officer.

(2) That the Federal officer was within one of the enumerated classes as set forth in the statute.

(3) That the Federal officer was engaged in the performance of his official duties or that he was assaulted or killed on account of the performance of his official duties.

9-1.2 Background and Definitions

9-1.2.1 Assaulting or Killing of Federal Officers

(1) The Bureau's jurisdiction in these cases is based on the original statute of 5-18-34, which made the assaulting or killing of certain Federal officers a Federal crime. The power of Congress to enact this legislation was challenged in *Barrett v. U. S.*, 82 F. (2d) 523, but the court held that there was no merit to the contention.

(2) Since its original enactment, this legislation has been amended several times to include within its provisions additional classes of Federal employees. The officers and employees that are covered are listed in Title 18, USC, Section 1114 (See 89-1.3.2). Effective 8-27-64, the statute was broadened to include any security officer of the Department of State or the Foreign Service. The intent of this addition is to extend the coverage to any security officer of the Department of State or Foreign Service engaged in protective activities under Title 22, USC, Sections 2666 and 2667. It is noted that persons afforded protection under Section 1114 are also afforded protection from assault under Title 18, USC, Section 111. (Title 22, USC, Section 2666, concerns those individuals employed by the Department of State and the Foreign Service who have been designated to carry firearms for the purpose of protecting heads of foreign states and other distinguished foreign visitors. Effective 8-27-64, these security officers are empowered to arrest without a warrant any person violating Title 18, USC, Sections 111 or 112, in their presence if they have reasonable grounds to believe that the person to be arrested has committed or is committing such a violation.)

(3) The Criminal Division of the Department has pointed out that one question upon which there has been considerable diversity of opinion relates to the necessity of alleging and proving that the defendant knew at the time the act was committed that the person killed or assaulted was a Federal officer or employee. (Court decisions that have held the defendant did not have to possess such knowledge in order to violate the statute are *U. S. v. Lombardozzi*, 335 F. (2d) 414 (1964), certiorari denied, and *Bennett v. U. S.*, 285 F. (2d) 567 (1960), certiorari denied.) It has been urged by some that, while it would not be necessary to prove that

SECTION 89. ASSAULTING OR KILLING OF FEDERAL OFFICERS;
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The defendant had knowledge that the person killed or assaulted was a Federal officer or employee where the officer was acting at the time in the performance of [his/her] official duties, it would be necessary to allege and prove the defendant's knowledge of the official character of the person killed or assaulted if the act was committed on account of the performance of [his/her] official duties. It is understood that the Criminal Division of the Department has generally taken the position that knowledge of the official capacity of the person killed or assaulted is not an element of the offense. Such evidence, where possible, however, should always be obtained.

(4) The penalties imposed for killing a Federal officer are based on the nature of the killing whether voluntary or involuntary manslaughter or murder. These terms are defined in Title 18, USC, §§ 1111 and 1112, as set out in 89-3.1.1 and 89-3.2.1 of this section.

89-1.3 Wording of AFO Statute

89-1.3.1 Section 111 - Assaulting, Resisting or Impeding Certain Officers or Employees

"Whoever forcibly assaults, resists, opposes, impedes, intimidates or interferes with any person designated in Section 1114 of this title while engaged in or on account of the performance of his official duties, shall be fined not more than \$5,000 or imprisoned not more than three years, or both.

"Whoever, in the commission of any such acts uses a deadly or dangerous weapon, shall be fined not more than \$10,000 or imprisoned not more than ten years, or both."

89-1.3.2 Section 1114 - Protection of Officers and Employees of the United States

"Whoever kills any judge of the United States, any United States Attorney, any Assistant United States Attorney, or any United States marshal or deputy marshal or person employed to assist such marshal or deputy marshal, any officer or employee of the Federal Bureau of Investigation of the Department of Justice, any officer or employee of the Postal Service, any officer or employee of the secret service or of the Drug Enforcement Administration, any officer or enlisted man of the Coast Guard, [any officer or employee of any United States penal or correctional institution,] any officer, employee or agent of the customs or the internal revenue or any person assisting him in the execution of his duties, any immigration officer, any officer or employee of the Department of Agriculture or of the Department of the Interior designated by the Secretary of Agriculture or the Secretary of the Interior to enforce any Act of Congress for the protection, preservation, or restoration of game and other wild birds and animals, any employee of the Department of Agriculture designated by the Secretary of Agriculture to carry out any law or regulation, or to perform any function in connection with any Federal or State program or any program of Puerto Rico, Guam, the Virgin Islands of the United States, or the District of Columbia, for the control or eradication or prevention of the introduction or dissemination of animal diseases, any officer or employee of the National Park Service, any officer or employee of, or assigned to duty in, the field service of the Bureau of Land Management, or any officer or employee of the Indian field service of the United States, or

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Any officer or employee of the National Aeronautics and Space Administration directed to guard and protect property of the United States under the administration and control of the National Aeronautics and Space Administration, any security officer of the Department of State or the Foreign Service, or any officer or employee of the Department of Health, Education, and Welfare, or of the Department of Labor [or of the Department of the Interior, or of the Department of Agriculture] assigned to perform investigative, inspection, or law enforcement functions, while engaged in the performance of his official duties, or on account of the performance of his official duties, shall be punished as provided under sections 1111 and 1112 of this title."

The Department of Justice advises in its opinion Supreme Court Justices are included in the category of "judge of the United States."

89-1.3.3 Section 2231 - Assault or Resistance

"(1) Whoever forcibly assaults, resists, opposes, prevents, impedes, intimidates, or interferes with any person authorized to serve or execute search warrants or to make searches and seizures while engaged in the performance of his duties with regard thereto or on account of the performance of such duties, shall be fined not more than \$5,000 or imprisoned not more than three years, or both; and--

"(2) Whoever, in committing any act in violation of this section, uses any deadly or dangerous weapon, shall be fined not more than \$10,000 or imprisoned not more than ten years, or both."

89-1.4 Policy

The Bureau will accept for investigation cases involving the assaulting or killing of any Government employee specifically named in Title 18, USC, § 1114, except cases involving assaults on employees of the U.S. Treasury Department. The Department has advised that the Bureau should not investigate assaults on any Treasury employees. The Department advised that if any case develops wherein the absence of an FBI investigation is materially interfering with law enforcement, the Attorney General should be advised. Furnish complete details of any such instance to FBIHQ.

By agreement between the Department of Justice, U.S. Postal Service (USPS), and the FBI, the following policy with respect to the investigation of assaults of USPS employees has been approved and it should eliminate overlapping investigative efforts by the USPS and the FBI:

"Unless otherwise directed by the Department, investigation of assaults on and homicides of personnel of the USPS is for the FBI if incidental to another violation under the primary investigative jurisdiction of the FBI or if the attack is by a nonemployee against a Postal Inspector and for the USPS in all other instances."

By way of clarification, this means the FBI will continue to investigate assaults on Postal Inspectors by outsiders, that assaults on Postal Inspectors by postal employees will be investigated by USPS, and that USPS will handle all other assaults on USPS personnel except in cases where the assault is incidental to another violation under the

primary investigative jurisdiction of the FBI, or if otherwise directed by the Department of Justice.

The Department has advised that the Bureau should accept complaints under Section 111 when the victim is an employee of the Agricultural Research Service, formerly the Bureau of Animal Industry, of the Department of Agriculture.

89-1.5 Investigative Procedure

(1) Promptly notify FBIHQ of receipt of each and every assaulting or killing of Federal officers complaint by teletype, airtel, or letter as exigencies of complaint dictate. FBIHQ should be advised immediately by telephone or teletype when an assault involves Bureau Agent personnel.

(2) As the investigations involving the murders of Government officers or Members or Members-elect of Congress may result in sentences of capital punishment being imposed against the defendants, Agents making such investigations should bear in mind that all evidence used in the trial of said defendants will be given the strictest interpretation and will be subject to the closest scrutiny by the trial court. Therefore, means should be taken to obtain and preserve any pertinent evidence in such a form that it will withstand the scrutiny of the court.

(3) Immediately following the commission of such a crime, a painstaking investigation should be made at the scene thereof.

(4) Interviews should be had with every individual who witnessed the crime or who would have been in a position to have known anything about the crime. If possible, signed statements should be obtained from all witnesses and such statements should not be restricted to only eyewitnesses but to any person who might later be in a position to state that he or she had some information concerning the offense.

(5) Statements from persons who were in the vicinity of the crime, who claim not to have seen or heard or known anything about it, should be secured. The statements will later preclude those persons from changing their testimony in the event that they are later contacted by defense counsel or their representatives.

(6) The witnesses should be thoroughly questioned concerning their understanding as to the identity of the persons involved, as to any remarks made by them or bystanders, and as to any incidents which came to their attention.

(7) Insofar as possible the investigation should eliminate the possibility of obtaining additional evidence of any nature in the future from any individual who may have been in the vicinity when the crime was committed.

(8) In proving the death of the murdered victim, it is essential to establish that the death was caused by reason of the acts of the defendants. It is, therefore, necessary that an autopsy be performed by a capable physician who will be competent to testify as to the cause of the death.

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(9) The investigation should exhaust every possible means or obtaining evidence to establish that the accused murdered the victim. If he was killed as the result of gunshot wounds, the bullets and the gun should be recovered for ballistic tests and the gun should be properly identified as having been used by the defendant. Likewise, if a knife or other instrument or means was used to accomplish the murder all available evidence connecting the instrument of death with the crime should be obtained and properly preserved.

(10) By the weight of authority in cases involving homicide and particularly those involving a murder of a law enforcement officer, evidence of the defendant's commission of a recent crime which might have been a reason for attempting to avoid arrest can be introduced during the trial of the case to show motive on the part of the defendant. Therefore, in conducting these investigations, every effort should be made to determine whether the defendant was a fugitive from justice or whether he was wanted for a crime in any jurisdiction pursuant to outstanding process or otherwise at the time he committed the murder.

(11) A thorough development of the past history of the defendant should be made as in many instances information is thus developed which later can be used as rebuttal evidence during the course of the trial.

(12) Title 18, USC, Section 3432, provides that when any person is indicted for a capital offense, a copy of the indictment and a list of the jurors and witnesses shall be delivered to him at least three entire days before the trial. It is, therefore, very important that during the investigation the full names of all prospective witnesses, together with their home addresses, the street, city, county, and state addresses, should be obtained. In some sections of the United States it is custom in issuing subpoenas duces tecum for records of corporations to designate some named official or "his authorized representative." However, in murder cases it is necessary for such subpoenas to be directed to the individual expected to produce the records at the trial and care should be taken that such person's name and address, together with his official capacity, be obtained.

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(14) Where a Federal judge is the victim of a violation of this statute the appropriate U. S. Marshal should be advised immediately. Additionally, if investigation is instituted, close personal contact should be established with the U. S. Marshal particularly during the initial phases. Copies of all investigative reports in such instances should be disseminated locally to the U. S. Marshal.

89-1.6 Character - Assaulting a Federal Officer;
 Killing a Federal Officer

PART I

SECTION 89.

ASSAULTING OR KILLING OF FEDERAL OFFICERS;
CONGRESSIONAL ASSASSINATION STATUTE

89-2

STATUTE - CONGRESSIONAL ASSASSINATION STATUTE (CAS)

Title 18, USC, Section 351.

89-2.1

Elements

Congressional Assassination Statute - Title 18, USC, Section 351.

That the defendant killed or kidnaped, attempted or conspired to kill or kidnap, or assaulted a Member of Congress or a Member-of-Congress-Elect.

89-2.2

Background and Definitions

89-2.2.1 Congressional Assassination Statute

(1) The Department defines a member of Congress as "one who is a component part of the Senate or House of Representatives, ... one who is sharing the responsibilities and privileges of membership." See United States v. Dietrich, 126 F. 676, 681 (8th Cir., 1904). It is the view of the Department that membership of Congress is extended to include those representatives or delegates such as the Resident Commissioner from Puerto Rico and the Non-Voting Delegate from the District of Columbia.

(2) Member of Congress-elect is one who has been certified by the usual state or local certifying official as having been elected to the Senate or the House of Representatives.

(3) In the absence of a statutory definition of assault, the Department indicates courts have looked to the common law and have concluded that an "assault" is:

(a) An attempt with force or violence to do a corporal injury to another; and may consist of any act tending to such corporal injury, accompanied with such circumstances as denote at the time an intention, coupled with the present ability, of using actual violence against the person. Guarro v. United States, 237 F. (2d), 578, 580 (D. C. Cir. 1956).

(b) In Ladner v. United States, 358 U. S. 169, 177 (1958). It was held an assault can also be committed "merely by putting another in apprehension of harm whether or not the actor actually intends to inflict, or is capable of inflicting that harm."

(4) Section 2514 of Title 18, by reference to the offenses enumerated in Section 2516, Title 18, allows the Attorney General to authorize through the United States Attorney to make application for "transactional immunity" for any necessary witness in any proceeding before any grand jury or court of the United States in connection with violations of the Congressional Assassination Statute.

(5) Note that the statute does not require the offense to be as a result of the performance of the Congressman's official duties nor does it require he be engaged in the performance of his official duties.

89-2.3 Wording of CAS Statute

SECTION 89. ASSAULTING OR KILLING OF FEDERAL OFFICERS;
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-2.3.1 Section 351. Killing, Kidnaping, Attempts and Conspiracy to Kill or Kidnap, and Assaults of Members of Congress or Congress-Elect

"(a) Whoever kills any individual who is a Member of Congress or a Member-of-Congress-elect shall be punished as provided by Sections 1111 and 1112 of this title.

"(b) Whoever kidnaps any individual designated in subsection (a) of this section shall be punished (1) by imprisonment for any term of years or for life, or (2) by death or imprisonment for any term of years or for life, if death results to such an individual.

"(c) Whoever attempts to kill or kidnap any individual designated in subsection (a) of this section shall be punished by imprisonment for any term of years or for life.

"(d) If two or more persons conspire to kill or kidnap any individual designated in subsection (a) of this section and one or more of such persons do any act to effect the object of the conspiracy, each shall be punished (1) by imprisonment for any term of years or for life, or (2) by death or imprisonment for any term of years or for life, if death results to such individual.

"(e) Whoever assaults any person designated in subsection (a) of the section shall be fined not more than \$5,000, or imprisoned not more than one year, or both; and if personal injury results, shall be fined not more than \$10,000, or imprisoned for not more than ten years both.

"(f) If Federal investigative or prosecutive jurisdiction is asserted for a violation of this section, such assertion shall suspend the exercise of jurisdiction by a State or local authority under any applicable State or local law, until Federal action is terminated.

"(g) Violations of this section shall be investigated by the Federal Bureau of Investigation. Assistance may be requested from any Federal, State, or local agency, including the Army, Navy, and Air Force, any statute, rule, or regulation to the contrary notwithstanding.

"(h) The Attorney General or any Assistant Attorney General specially designated by the Attorney General, may authorize an application to a Federal judge of competent jurisdiction for, and such judge may grant in conformity with section 2518 (Title 18, USC) an order authorizing or approving the interception of wire or oral communication by the Federal Bureau of Investigation, or a Federal agency having responsibility for the investigation of the offense as to which the application is made, when such interception may provide or has provided evidence of any offense which is punishable under Title 18, USC, Section 351."

89-2.4 Policy

In Congressional Assassination Statute investigations, the Department has requested to be advised should a Congressman - victim or a Member-of-Congress-elect - victim request an investigation be terminated or left solely in the hands of local law enforcement personnel.

Since violations of Assaulting of Federal Officers and Congressional Assassination Statute will fall within purview of agreement between FBI and Secret Service concerning protective responsibilities, local office of Secret Service should be furnished a copy of reports.

89-2.5 Investigative Procedures

(1) Upon receipt of any information indicating a possible violation of the Congressional Assassination Statute, FBIHQ should be advised by telephone or teletype, depending upon the circumstances. Although threats against Members or Members-elect of Congress are not violations of Title 18, USC, Section 351, in view of the importance of these matters, the U. S. Secret Service and the Office of the Congressman will be immediately advised no FBI investigation will be instituted. (Field Office covering victim's home district should, however, immediately furnish information concerning possible violation or threat to (a) [REDACTED] b2

(2) In investigations of violations of the Congressional Assassination Statute, the FBI is authorized to request assistance from the Army, Navy, and Air Force. This is a specific exception to the Posse Comitatus Statute (Title 18, USC, Section 1385.)

89-2.6 Character - Congressional Assassination Statute

89-3 STATUTES COMMON TO AFO AND CAS CLASSIFICATIONS

89-3.1 Title 18, USC, Section 1111 (Murder)

Section 1111 imposes the following penalties for murder:

"Whoever is guilty of murder in the first degree, shall suffer death unless the jury qualifies its verdict by adding thereto 'without capital punishment,' in which event he shall be sentenced to imprisonment for life."

"Whoever is guilty of murder in the second degree, shall be imprisoned for any term of years or for life."

89-3.1.1 Section 1111. Murder (Definition)

Murder is the unlawful killing of a human being with malice aforethought. Every murder perpetrated by poison, lying in wait, or any other kinds of willful deliberate, malicious, and premeditated killing; or committed in the perpetration of, or attempt to perpetrate, any arson, rape, burglary, or robbery; or perpetrated from a premeditated design unlawfully and maliciously to effect the death of any human being other than he who is killed, is murder in the first degree.

"Any other murder is murder in the second degree."

89-3.2 Title 18, USC, Section 1112 (Manslaughter)

Section 1112 imposes the following penalties for manslaughter:

"Whoever is guilty of voluntary manslaughter, shall be imprisoned not more than ten years;

"Whoever is guilty of involuntary manslaughter shall be fined not more than \$1,000 or imprisoned not more than three years, or both."

89-3.2.1 Section 1112. Manslaughter (Definition)

"Manslaughter is the unlawful killing of a human being without malice. It is of two kinds:

"Voluntary--Upon a sudden quarrel or heat of passion.

"Involuntary--In the commission of an unlawful act not amounting to a felony, or in the commission in an unlawful manner, or without due caution and circumspection, of a lawful act which might produce death."

89-3.3 Section 372, Title 18, USC. Conspiracy to Impede or Injure an Officer

"If two or more persons in any State, Territory, Possession, or District conspire to prevent, by force, intimidation, or threat, any person from accepting or holding any office, trust, or place of confidence under the United States, or from discharging any duties thereof, or to induce by like means any officer of the United States to leave the place, where his duties as an officer are required to be performed, or to injure him in his person or property on account of his lawful discharge of the duties of his office, or while engaged in the lawful discharge thereof, or to injure his property so as to molest, interrupt, hinder, or impede him in the discharge of his official duties, each of such persons shall be fined not more than \$5,000 or imprisoned not more than six years, or both."

Note: Under Section 111 some force must be used for a violation to be effected. Section 372, however, provides broader coverage, where two or more subjects are involved, since it does not require the prohibited acts be committed forcibly.

89-4 VENUE - AFO AND CAS

(1) In these investigations the question of jurisdiction and venue becomes very important. Title 18, USC, Section 3236, provides that the crime of murder is committed at the place where the injury was inflicted, the poison administered, or other means employed which caused the death of the victim, without regard to the place where the death occurred. Adequate photographs should be taken of the scene of the crime at the earliest possible moment. Measurements and charts should be made indicating the location of the witnesses who are to testify and indicating the line of vision or the possibility of observation by these witnesses.

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Enlarged photographs and charts have been found to be of value not only in determining jurisdiction but also for use in the courtroom during the trial of the case.

(2) Title 18, USC, 3235, provides that the trial of offenses punishable with death shall be had in the county where the offense was committed, where that can be done without great inconvenience. However, this statute does not confer upon the defendant an absolute right to have the trial in the county where the offense was committed, but the court has some discretion in determining the situs of the trial and where the trial judge, after hearing, determines the trial cannot be had in the county where the offense was committed without great inconvenience, and no abuse of discretion is apparent, his findings will not be disturbed (Brown v. U. S., 256 U. S. 335). Other supporting decisions are: Greenhill v. U. S., 6 F (2d) 134, and Davis v. U. S., 32 F. (2d) 860. Greenhill v. U. S. holds that the lack of a U. S. public building in the county where the crime occurred justifies holding the trial elsewhere. Davis v. U. S. holds that this statute leaves the discretion to the trial judge and that where there was no provision for a term in court in the county where the murder was committed the designated place of trial need not even be the nearest and most accessible county.

CONTINGENCY PLANS
ACT FOR THE PROTECTION OF FOREIGN OFFICIALS
AND OFFICIAL GUESTS OF THE UNITED STATES

The Act for the Protection of Foreign Officials and Official Guests of the United States was enacted by signature of the President on October 24, 1972. Pursuant to its enactment, the FBI assumed responsibility for investigations of those violations contained in the Act, Public Law 92-539.

Commensurate with responsibilities for investigations of violations, to include Title 18, USC, Section 1116, Murder or Manslaughter; Title 18, USC, Section 1117, Conspiracy to Murder; and Title 18, USC, Section 1201, Kidnaping of Foreign Officials or Official Guests of the United States, the FBI implemented in November, 1972, a requirement for each field office to formulate a field contingency plan.

These plans are updated on a yearly basis by each field office and submitted for approval to the Terrorism Section of the Criminal Investigative Division. The plan consists of segments detailing command authority, communications, manpower requirements, equipment requirements, and identification of diplomatic establishments within divisional geographical areas. Within each listed segment of the plan, specific lines of authority are set forth, telephone numbers

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of local and other Federal law enforcement agencies are listed, notification flow charts are presented for progressive contact during off-duty hours of personnel responding to incident, on-scene command post requirements are listed, as well as equipment requirements for a particular contingency.

These contingency plans used for initiation in the event of terrorist activity involving kidnaping, murder, or takeover of an embassy building have been "gamed" to test the efficiency and effectiveness of response and, in fact, have been used in response to terrorist activities occurring in the United States. Within the past year, these include the takeover of the West German Consulate in Chicago, Illinois; the takeover of the Chilean Consulate in San Juan, Puerto Rico; and in previous years, the takeover of the Philippine Embassy in Washington, D. C.; and the assassination of former Chilean Ambassador to the United States, Orlando Letelier, in Washington, D. C.

The practical application of the contingency plans has resulted in singular command voices at the crime scene; liaison and coordination with local and other Federal law enforcement agencies, both at the scene and throughout the investigation; and the combining of technical expertise and equipment to aid in the successful resolution of the activity occurring.

As a supplement to the field office contingency plans, there exists the Headquarters contingency plan encompassing notification procedures in the event of a terrorist act occurring. These procedures include communicating with U. S. Department of State; White House Situation Room; U. S. Department of Justice, Emergency Programs Center; U. S. Secret Service, Intelligence Division; and the National Military Command Center. Initial information, as well as updates, are provided regarding terrorist incidents and coordination of possible investigative efforts is accomplished through implementation of this contingency plan.

Civil Rights and Related Assassination Investigations

All civil rights investigations initiated by the FBI are conducted based upon statutory authority such as under Title 18, U. S. Code, Section 241 (civil rights conspiracy statute) and Section 242 (deprivation of rights under color of law), and pursuant to the guidelines of the U. S. Department of Justice.

For example, the Department requested the FBI to conduct an investigation into the assassination of Martin Luther King, Jr., who was shot in Memphis, Tennessee, on 4/4/68, based upon the statutory authority of Section 241. (The assassination interfered with his Federal right to travel freely from one state to another.)

The Department also requested the FBI to conduct an investigation into the shooting of Governor George C. Wallace in May of 1972, at Laurel, Maryland, based, in part, on the statutory authority of Title 18, U. S. Code, Section 245 (federally protected activities), in that there was an interference of a federally protected activity, namely, the qualifying or campaigning as a candidate for elective office.

The subject, Arthur Bremmer, was immediately taken into custody and thereafter charged with Section 245 and Title 18, U. S. Code, Section 111, Assault on a Federal Officer in connection with the shooting of a Secret Service Agent who was with Wallace. The subject was also subsequently charged with violation of the Federal firearms statutes. He was ultimately convicted in State Court.

ROLE OF THE DOMESTIC SECURITY INVESTIGATION

The domestic security investigation is often referred to as the "preventive phase" of the Terrorism Program. The domestic security investigations comprising the preventive phase are conducted in compliance with the Attorney General Guidelines for such investigations as implemented on April 5, 1976.

These investigations are conducted to ascertain information on the activities of individuals or groups which involve or will involve the use of force or violence and which involve or will involve the violation of Federal law for four explicitly stated purposes. These investigations have as their bases the likelihood of criminal activity or actual criminal activity on the part of the group or individual involved.

One objective of these investigations is the early development of information concerning criminal conduct or activities prior to the commission of a completed terrorist act. The Bureau's ability to detect, identify, and collect evidence for the prosecution of terrorists and terrorist groups in advance of the completed act serves to prevent terrorist violence. Such investigations often allow

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the FBI to prevent an act of terrorism by alerting the target or targets involved.

The advantage of a reliable domestic security investigative unit within the Terrorism Program can be seen in the possibility that foreknowledge of contemplated assassination of the President of the United States or other public figure could be brought to the Bureau's attention at an early stage, thus enabling its prevention through appropriate investigative action.

Information developed by the FBI's domestic security investigations is provided appropriate dissemination within the Executive Branch of Government, including the U. S. Secret Service which has protective responsibilities insofar as the President is concerned. In addition, information which is developed through our domestic security investigations as it relates to threats to life and property of any individual is promptly made available to that individual. For example, during the summer of 1977, the FBI developed information through two undercover Special Agents who had infiltrated the Weather Underground Organization (WUO) indicating that terrorist group was planning a act of violence against a member of the California State Legislature. This information was conveyed to that individual promptly on its receipt and our resultant

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investigation culminated in the arrests of four Weather Underground subjects and the leader of the West Coast above-group support organization for the WUO in November, 1977. These arrests prevented the bombing of the public official's office.

Of some concern, however, is the significantly diminished Domestic Security Program and the resultant loss of a broad security informant base capable of providing advance information concerning planned terrorist activities. As of October 27, 1978, the FBI was conducting domestic security investigations of only 13 organizations and 40 individuals.

The adoption of the Attorney General Guidelines in 1976, considerably diminished our informant base by virtue of the fact that a great number of revolutionary and extremist groups, including the revolutionary Socialist Workers Party which advocates violent overthrow of the United States Government, were closed since their activities did not meet the investigative criteria set forth in the Guidelines.

INFORMANTS

The FBI is operating several highly productive informants in every high priority investigative area. The availability of this coverage varies in some geographical areas. The FBI's ability to develop informants has been effected by factors which impact upon the FBI's ability to protect the identity of informants, such as Freedom of Information and Privacy Acts and certain civil suits. FBI Agents have also indicated concern regarding the personal risks which they are exposed to in the operation of informants.

The FBI has no informants developed specifically for providing information regarding the possible assassination of any major political figures. Any information the FBI may obtain regarding possible assassinations would be coincidental. Should an assassination occur, every informant would be contacted regarding any possible knowledge of the assassination and any positive information obtained would be coincidental.

Current Bureau Structure and Operations (B. 2 & 3)

Perhaps more approachable to other victims.

The Director would have overall authority of any investigations of crimes against the President. He would be assisted by the Associate Director, and by the Assistant Director, Criminal Investigative Division (CID) as well as two Inspector - Deputy Assistant Directors of the CID. The Section Chief of the Personal and Property Crimes Section of the CID with an appropriate staff of supervisory Special Agents, would coordinate all leads and investigative results from the field and outside sources and forward recommendations and policy decisions up the chain of command for approval.

? A supervisory Special Agent in the Section would be assigned the case at the first level of supervision, however, would be assisted by other supervisory Agents in the Section.

Depending upon the complexity of the incident, the Director would decide whether the Special Agent in Charge (SAC) of the Field Office where the incident occurred had sufficient time, based upon the demands of other duties, to handle the overall field investigative effort, or whether another Bureau official such as an Inspector would be sent to the scene to take full charge of the field investigative effort. The SAC or Inspector would have direct access to the

Director on emergency decisions, and would brief the Director where pertinent. The SAC or Inspector also would have complete access to others in the chain of command.

The SAC or Inspector would have Special Agents and Field Supervisors working on the investigation who would report directly to them.

Other field offices would be requested either by the SAC, Inspector, or FBI Headquarters to conduct investigations needed in their respective territories. FBI Headquarters would also coordinate information needed from the FBI Legal Attaches in foreign countries. Other Divisions at FBI Headquarters such as the Intelligence Division and the Legal Counsel Division would report information to the Criminal Investigative Division and others up the chain of command and to the field where pertinent. Other service Divisions such as the Laboratory, Identification, and Records Management Divisions also would provide respective information to other Bureau Divisions and the Field when requested.

The appropriate United States Attorney and the Department would be kept fully advised of all pertinent developments.

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XXXXXXFEDERAL BUREAU OF INVESTIGATION
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ACQUISITION OF THIRD PARTY RECORDS

A third-party record can be defined as any record or writing pertaining to a person (the first party) which is being sought by the Government (the second party) and which is in the custody of another person (the third party). Such records generally include purchase and billing records, telephone company records, registrations, bank records, credit and financial reports, and tax records.

In general, the FBI may acquire third-party records through a judicial search warrant, grand jury subpoena, or by consent of the holder.

The utilization of a search warrant is restricted by the Fourth Amendment in that there is a need to show upon appellate review that there existed probable cause for the search supported by sworn affidavit, that the warrant described with particularity the goods to be seized and the place to be searched, and that the warrant was issued by a disinterested magistrate. Obviously, the judicial warrant approach is restrictive in nature and not the mechanism for broad acquisition of third-party records.

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A grand jury subpoena may also be utilized to obtain records. If the person ordered to produce the documents refuses, the Government may seek a court order compelling production. The party to whom the subpoena is directed may challenge the validity of the subpoena, but he has the burden of proving that the subpoena is invalid. He must prove that the subpoena is unreasonable as to its breadth and irrelevant as to the inquiry. Oklahoma Press Publishing Company v. Walling, 327 U.S. 168, 207, 208 (1946).

We should point out that disclosure of grand jury proceedings to any person other than the attorney for the Government is generally prohibited inasmuch as these proceedings are secret. Rule 6(e), Federal Rules of Criminal Procedure.

As noted earlier, records in possession of third parties may also be acquired through their consent. In such circumstances, consent is said to be vicariously given, that is, given by the third party for the owner. And although consent may be vicarious, the right to relief is personal and may not be vicariously given. The owner, as a general rule, does not have standing as the right and capacity to object rests only with the holder of the records. United States v. Miller, 425 U.S. 436 (1976).

In sum, the Fourth Amendment does not afford the owner of records the right to challenge its disclosure where he is not also its holder.

Similarly, the Fifth Amendment right against self-incrimination is essentially a personal privilege and may not be claimed on behalf of another or by a corporation or association. Ellis v. United States, 417 U.S. 85 (1974). Hence, a holder of records ^{which} incriminating another has no standing to object to its disclosure. This rule has not been extended to records in the possession of counsel.

Aside from the constitutional considerations discussed above, the FBI is also presently restricted in its ability to acquire third-party records by statutes in the following areas:

- 1) FBI Acquisition of Tax Records from the IRS - The Tax Reform Act of 1976 (Title 26, U. S. Code, Section 6103) considerably restricts Federal investigatory agencies from acquiring tax information on persons or corporations from the IRS. Indeed, the requirements are more rigorous than those for obtaining a subpoena. The statute provides that "tax return information" may be provided to an agency for use in investigating a Federal criminal (non-tax) case only upon order of a Federal District Court judge. The head of the Federal agency must show in his application for such an ex parte order that (1) there is reasonable

cause to believe that a criminal statute has been violated;
(2) the information sought has probative value; and
(3) the information cannot reasonably be obtained from
another source or that the return information is the most
probative evidence of the criminal misconduct.

As to acquiring "information other than taxpayer information," the Act now prescribes that the Assistant Attorney General must first request the information from IRS in writing. There are also other provisions pertaining to disclosure of nontax return information which are significant but not here explained.

It should be noted that IRS has interpreted any information relating to a Social Security Card as "taxpayer return information," thereby requiring a court order before its disclosure.

2) FBI Acquisition of Records From a Financial Institution - The Right to Financial Privacy Act (P.L. 95-) will significantly curtail the FBI's ability to gain access to records in the possession of third party financial institutions. The bill creates a right of privacy for an individual or partnership of five or less in records maintained by a financial institution. The bill was Congress' apparent response to the Supreme Court's decision in United States v. Miller which held that

C
a customer could not object to the Government's access to his financial records at an institution because the records were the property of the institution and the individual. In effect, the bill ^{not} ends informal access to financial records and requires that the Government use one of the following methods to obtain such records:

- A) Customer authorization;
- B) Administrative summons or subpoena - not applicable to the FBI;
- C) Search warrant;
- D) Judicial warrant; or
- E) Noncompulsory formal written request for agencies lacking summons or subpoena powers.

The cornerstone of this bill is that, subject to certain exceptions, ^{the} an individual has a right both to be notified when the Government is seeking his financial records and to challenge the Government's access to his records. ^{SECTION 106, 1107, 1126.}

3) FBI Access to Commercial Records Held by Third-Party Credit Agencies - Under the Fair Credit Reporting Act of 1977 (FCRA), Title 15, U. S. Code, Section 1681, consumer credit reporting agencies are prohibited from furnishing information on a consumer credit history except (1) where disclosure is authorized by the consumer; (2) where the agency has reason to

believe that the information is to be used solely in deciding whether to extend credit, insurance, employment licenses, or other business transactions to the customer; or (3) where so ordered by a court, the Act limits even further disclosure of material dealing with background, associates, life-styles, etc. Exempt from the foregoing provisions is a report to any Government agency containing only the consumer's name, address, former address, and employment history.

Finally, like the Financial Privacy Act, the FCRA requires that upon request, a consumer must be informed of the identities of all recipients of consumer reports pertaining to him, even when the recipient is a Governmental investigatory agency.

As the foregoing demonstrates, the ability of the FBI and other Government agencies to obtain third-party records has become more burdensome and difficult. Indeed, in keeping with the spirit of the Privacy Act of 1974, Title 5, U. S. Code, Section 552a, the FBI, as a matter of policy, has itself restricted its collection of information to only those matters which are necessary and relevant to ^{its} authorized functions and purposes. We should also point out that third-party holders in the public and private sectors have become more aware of individual privacy interests and more sensitive to potential civil and criminal liability with regard to disclosing

*hcd
very
Dewy*

records in their possession. As a result, these holders; i.e., telephone companies, have refused to voluntarily disclose records and have, in turn, required Governmental agencies to compel routine disclosure through the grand jury subpoena process.

In short, that cooperative attitude of third-party record holders which manifested itself during the Kennedy Assassination investigation to provide the FBI with its records no longer prevails. Furthermore, the trends of third-party record law suggests that even more restrictions will be imposed upon the Government's ability to acquire such records. At least 48 legislative proposals that could extend the spirit of the Right to Financial Privacy Act to other types of records such as toll records, medical, credit and employment records, criminal history records, and other information were introduced in the 95th Congress. H.R. 10076, an omnibus bill consolidating many legislative proposals and recommendations, is certain to receive considerable attention in the 96th Congress. This bill would even go so far as to restrict the use of grand jury subpoenas and search warrants for personal papers, such as business records of a sole proprietorship. (H.R. 10076, 307.)

Additionally, proposed legislation to reform the grand jury system, such as the Grand Jury Reform Act of 1977 (S. 1449) will have a significant adverse impact

[illegible]

The question of whether new legislation of a preemptive nature is necessary can be answered in the negative. It is clear that Title 18 U.S.C. 1751, Presidential Assassination, created Federal jurisdiction and made it a federal crime to kill, kidnap or assault the President, etc. The law assures that if Federal jurisdiction is asserted, full and complete Federal investigative and prosecutive jurisdiction is in the FBI, and such assertion shall suspend the exercise of jurisdiction by a State or local authority under any applicable State or local law until Federal action is terminated (emphasis added). The situation in 1963, wherein the Secret Service technically violated Texas Code Annotated Section 956 et. seq., (autopsy required in event of homicide, prohibits removal of body), is not a viable consideration in 1973, the effect of Title 18 U.S.C. 1751 would obviate the Texas law.

The second question of whether a recommendation should be made concerning the freezing of travel records or communication records (telephone, etc.) for a six month period, does not seem to have been a problem to the factfinder of the Warren Commission. There is no indication that any investigative agency or the Commission encountered any difficulty in obtaining records or was faced with the

destruction of any records of investigatory interest. It should be noted that today similar records could only be obtained by use of a subpoena, or they would not be available in the form or in the degree of detail as in 1933. The implementation of such a retention program on the private sector would seem to be burdensome and be precluded by the magnitude of the project. It's conceivable that a wide spread conspiracy could include destruction of these records on a limited basis but a concerted investigative effort has demonstrated that the material would probably be recovered in some evidentiary form.

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XXXXXXFEDERAL BUREAU OF INVESTIGATION
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PHOTOGRAPHS, AND OTHER MATERIALS PERTINENT TO
THE CASE AS ASSASSINATIONS WHICH MAY BE IN THE POSSESSION
OF THE MEDIA

Mr. Robert Blakey, Chief Counsel to the House Select Committee on Assassinations, has indicated that it is common practice for media personnel covering media and political events to carry with them tape recorders which are constantly running. He inquired about the FBI's authority and policy with regard to obtaining such recordings or other materials of a similar evidentiary nature which may be in the possession of the media.

Assuming such items are not voluntarily delivered to the FBI by the news media, *they may be accessible through* a grand jury subpoena or a search warrant to obtain such materials. Tape recordings and similar evidentiary materials such as photographs and videotapes might in particular cases be invaluable in the investigations of political assassinations.

In the 95th Congress, thirteen pieces of proposed legislation were introduced in response to the United States Supreme Court decision in Zurcher v. Stanford Daily. None of these legislative proposals were voted out of committee but strong Congressional sentiment favors some such legislation in the 96th Congress. Some of the proposed legislation protects all third parties; other proposed legislation protects only the news media. Some proposals

allow search warrants after a failure to comply with a subpoena duces tecum. Other proposals do not provide for any method of obtaining such material.

The Department of Justice has indicated a tentative position favoring a subpoena-first procedure except (1) when the holder is involved in criminal activities to which the material is relevant; (2) the subpoena has not been complied with; and (3) there is imminent peril to human life.

VISUAL INVESTIGATIVE ANALYSIS

Visual Investigative Analysis (VIA) is a modified version of Program Evaluation and Review Technique/Critical Path Method (PERT/CPM) management information systems developed primarily for project management. VIA makes use of the principals of the network-based systems to graphically display the sequential and concurrent order of performance and dependency relationships of all the elements of an investigation. However, VIA modifications of PERT/CPM rules enables VIA to be more flexible in the application of charting principals. The rules of network logic may be bent or broken and the function of symbols may be expanded and new symbols may be used. Each VIA chart is uniquely designed to suit the individual needs of each case. The primary function of the VIA technique is to provide administrative assistance in solving complex investigations.

The tremendous amounts of information detailed in an investigator's report makes it difficult to analyze the relationships between isolated pieces of important data necessary to better understanding the elements involved in a crime. Isolating these elements and charting them in term of their logical dependence upon one another allows the observer to visually follow the crime much as you would in

reading a road map which gives you clear direction in reaching a desired goal.

The goal in the use of VIA is an understanding of the involvement of persons, dates, times and places and identifies their interrelationships with other known facts in the overall completion of a crime from its beginning up to the point of final completion.

Through the use of a clearly defined set of symbols the analyst can chart relevant pieces of information available to him into the VIA format. The activity arrows and event modes are logically connected to represent the sequential and concurrent flow of activities. All exceptions, additions and other innovations ^{are} ~~all~~ introduced as required.

The VIA chart presents the investigator with a graphic display of a reconstruction of the crime as it occurred, a reconstruction of the on-scene and follow-up investigation and/or a plan of action for continuing the investigation. This illustrates to the investigator areas where potential leads may be developed and points out positive leads that must be investigated.

The VIA analyst and the investigator work together as a team, constantly revising and updating the information on the VIA chart. Information concerning additional leads developed and investigated is incorporated into the network on a regular basis. This process is continued up to and including the presentation of the case in court.

TECHNICAL SURVEILLANCE OF INVESTIGATIVE TARGETS

Title III of the Omnibus Crime Control and Safe Streets Act of 1968 provides for utilization of electronic surveillance techniques with judicial authorization in violations as murder; kidnaping; robbery; extortion; espionage; sabotage; treason; disclosure of atomic energy information; organized crime activities; and Presidential assassination, kidnaping, or assault. The Attorney General possesses the authority in an emergency situation to authorize electronic surveillances.

In an emergency situation involving the assassination of a major political figure, all investigative means available would be utilized in an attempt to obtain necessary information leading to the identification and prosecution of the perpetrators, to include electronic surveillance.

THE FBI'S POLICY CONCERNING THE USE OF HYPNOSIS

Hypnosis, as a tool in law enforcement, has been used sporadically by various local police departments throughout the United States since 1959, with little or no controls concerning who would hypnotize. The FBI's policy concerning the use of hypnosis in law enforcement was originally set forth in 1968, and subsequently was revised in 1976. Current policy states that the FBI is to utilize hypnosis only in select cases. This would be in such cases as bank robbery wherein force is used or a large amount of money is involved; in kidnapping cases; extortions; or crimes of violence which occur where the FBI has jurisdiction. Hypnosis is confined to its use upon key witnesses or to victims of crimes only. No one who has the potential of becoming a suspect or subject in a case is to be hypnotized for any reason.

The FBI uses only psychologists, psychiatrists, physicians, or dentists who are highly qualified as hypnotists to do the actual induction. The use of hypnosis must be discussed with the U. S. Attorney and his permission obtained. Additionally, the U. S. Attorney must obtain written permission from the Assistant Attorney

General of the Criminal Division of the U. S. Department of Justice. The current policy states that no Bureau Agent may participate in a hypnotic interview without written permission from the Attorney General. Further, the hypnotic interview must be recorded, in its entirety, either by audio or video tape with video the preferred method.

On June 1, 1978, the FBI Training Division conducted a Law Enforcement Hypnosis Seminar. Attending was one Agent from each field office throughout the United States. The purpose of the seminar was to familiarize Agents with as many theories as possible on hypnosis techniques and complications. [REDACTED] and [REDACTED] both internationally known experts in the field of hypnosis, were asked to participate in this seminar. [REDACTED] instructed the Agents extensively in the various theories existing in the use of hypnosis and familiarized the Agents with the possibility for "leading" the witness or victim in their responses while under hypnosis. The thrust of [REDACTED] lecture was not concerned with instructing FBI Agents on how to hypnotize. Rather, Bureau Agents were taught to act as liaison between the professionals who actually hypnotize the witness or victim, and the legal needs of the FBI. In Fiscal Year 1977-78, the FBI has requested the use of hypnosis in excess of 30 cases. While initial results from those cases where hypnosis has been conducted indicate that hypnosis is a valuable investigative tool, this area is still being researched by the Training Division of the FBI.

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PSYCHOLINGUISTICS:
THE ANALYSIS OF COERSIVE COMMUNICATIONS
AS AN INVESTIGATIVE TECHNIQUE

Based on an interagency transfer of funds from the Law Enforcement Assistance Administration (LEAA), the FBI since 6/18/75 has monitored the utilization of psycholinguistic analysis in selected Bureau cases. Under the provisions of the LEAA grant, all psycholinguistic analysis is performed by [REDACTED]

1. # 75

UNITED STATES GOVERNMENT

UNITED STATES DEPARTMENT OF JUSTICE
FEDERAL BUREAU OF INVESTIGATION

Memorandum

Assoc. Dir. _____
Dep. AD Adm. _____
Dep. AD Inv. _____
Asst. Dir. _____
Adm. Servs. _____
Crim. Inv. _____
Ident. _____
Intell. _____
Laboratory _____
Legal Coun. _____
Plan. & Insp. _____
Rec. Mgnt. _____
Tech. Servs. _____
Training _____
Public Affs. Off. _____
Telephone Rm. _____
Director's Sec'y _____

TO : Mr. Ingram

DATE: 11/7/78

FROM : K. E. Joseph

SUBJECT: HOUSE COMMITTEE ON
ASSASSINATION

Per your 11/6/78 request, enclosed are addendum regarding Bureau policy and use of hypnosis and psycholinguistics which you may desire to include in Director's testimony.

The Training Division does not maintain a separate listing of scientific equipment and contracts which data is maintained in the Laboratory Division. Contact with the Laboratory Division indicates this information will be supplied by the Laboratory Division.

JM:sm
(3)

Doc # 26

9. Existing Bureau policy concerning the use of tape recorders in interviews of subjects, suspects or witnesses in major cases is based on a survey taken at FBIHQ and contact with field personnel. The survey determined general opposition to any rule which would require tape recording of interviews.

Analysis of the question has raised a number of problem areas that must be taken into account when deciding whether or not to record the statements of witnesses, subjects, or suspects. The voluntariness of the statement must be clearly established. Questioning must be carefully prepared so that tone of voice or wording does not suggest intimidation or promise of reward. Mechanical reproduction must be of such quality as to preclude any question of editing or alteration. Tapes must be sealed and stored, and chain of evidence maintained. Since recorders can have an inhibiting effect on some individuals, this potential must be evaluated. While these problems are not insurmountable, they dictate that the use of recorders be made on a limited, highly selective basis. Current instructions emphasize it is imperative that any use of recording equipment be open and unconcealed; and the tape itself must clearly indicate knowledge and consent by the person being interviewed that the interview is being recorded. The use of tape recorders is currently permitted on SAC authority.

In light of the inherent problems in the use of tape recorders set forth above it is recommended the existing policy be continued.

(B) **TAPE RECORDING OF INTERVIEWS** -- Recent suggestions have been received from FBI Field Offices that in lengthy interviews or selected interviews in major cases consideration be given to the use of tape recorders. Survey of FBIHQ and contact with field personnel reflects general opposition to any rule which would require tape recording of interviews. However, it was generally favored that the field be permitted to use this investigative technique on a limited basis.

Analysis of the question has raised a number of problem areas that must be taken into account when deciding whether or not to record the statements of witnesses, subjects, or suspects. The voluntariness of the statement must be clearly established. Questioning must be carefully prepared so that tone of voice or wording does not suggest intimidation or promise of reward. Mechanical reproduction must be of such quality as to preclude any question of editing or alteration. Tapes must be sealed and stored, and chain of evidence maintained. Since recorders can have an inhibiting effect on some individuals, this potential must be evaluated. While these problems are not insurmountable, they dictate that the use of recorders be made on a limited, highly selective basis.

In application of this technique, strict adherence to Bureau rules^a regarding interviews, as set forth in FBI Handbook, Part II, Chapter 2, must be insured. It is imperative that any use of recording equipment be open and unconcealed; and the tape itself must clearly indicate knowledge and consent by the person being interviewed that the interview is being recorded. The use of tape recorders will be permitted on SAC authority. Cassette recorders previously furnished the field, such as Sony models TC-110A, TC-110B, or TC-55, with built-in microphone and automatic recording level control should be utilized. I expect, however, that careful consideration be given to the circumstances in each individual case, and strict administrative control be maintained over the use of this technique and equipment.

Clarence M. Kelley
Director

7/29/75
MEMORANDUM 33-75

11/6/78

Mr. Moore (Attention: Mr. Ingram)

The FBI Laboratory has immediate access to recognized scientific experts through contacts at Federal laboratories (over 180 in number) that permits us to obtain scientific expertise in virtually all disciplines. As examples, chemical and biological warfare matters can be handled through the U. S. Army Chemical Systems Laboratory at Edgewood, Maryland. In the situation of assassination of a national figure, we can obtain immediate assistance through the Armed Forces Institute of Pathology. Additionally, we have contacts with other laboratories at industrial and university levels that provide us with scientific expertise that may not be available in our Laboratory.



Bell P. Herndon

In reply to question number 11 from letter dated 10/6/78,
to Mr. Bassett from Mr. Drew J. Clark.

The Bureau has no formalized list of recognized scientific experts in the area of acoustic analysis. On an informal basis, experts in the area of Digital Signal Analysis have been contacted, their equipment identified and discussed, as well as, their area of expertise in the general application of Advanced Signal Processing Techniques.

The Audio Analysis Unit of the Technical Services Division has the most Advanced Signal Processing equipment currently available. This equipment is used daily, by FBI experts in the tape enhancement, signal recognition, and voiceprint fields.

In reply to question number 1 from letter dated 10/6/78,
to Mr. Bassett from Mr. Drew J. Clark.

The Engineering Section has designated specific primary
and backup personnel and set aside special equipment to support
crisis management teams at FBIHQ and in the field.

MR. BOYNTON

Whether or not the FBI would advocate ~~or~~
institute specific rules pertaining to the release of
investigative information to the public via the media.

The release of all investigative information
by the FBI is governed by Section 50.2 of Title 28
of the Code of Federal Regulations. This is entitled
"Release of Information by Personnel of the Department
of Justice Relating to Criminal and Civil Proceedings"
which clearly defines the types of information that
may, as well as the types of information that may not,
be made available to news media with regard to pending
civil and criminal cases by employees of the Department
of Justice, including FBI personnel.

In a matter of national concern, such as an
assassination, investigative information would be made
available to the public if the Attorney General believed
that such action was in the best interests of the United
States and so directed the FBI.

~~SECRET~~
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+ referred to App. Agency

ALL INFORMATION CONTAINED
HEREIN IS UNCLASSIFIED
EXCEPT WHERE SHOWN
OTHERWISE.

Classified by *SP 8 BJA/om*
Declassify on: OADR *2/1/84*
211026

~~SECRET~~

Doc # 1

- N. Support Capability
 - N.1. Visual Investigative Analysis - *connection up*
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①

September 8, 1978

Judge:

On September 8, 1978, G. Robert Blakey, Chief Counsel and Director, House Select Committee on Assassinations, advised that he had a difficult time persuading his staff to go along with your desire not to testify on historical issues dealing with the Kennedy Assassination investigation and would definitely not desire your appearance at the conclusion of the "Kennedy" and "King" hearings. He felt this would be out of context and only desires your testimony during the Kennedy hearings. Mr. Blakey was advised that this would not be out of context since you would testify as to how the FBI would currently handle a Presidential assassination or a major investigation such as the murder of Martin Luther King.

Mr. Blakey stated he only desires your testimony on September 20, 1978, during the Kennedy hearings.

Attached is the outline as proposed by Mr. Blakey.

In view of the above, you may wish to have a conference with Mr. Adams, Assistant Director Mints and Unit Chief Coulson.

John A. Mints

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Clark

10/6/78

Mr. Bassett:

HOUSE SELECT COMMITTEE ON ASSASSINATIONS
U. S. HOUSE OF REPRESENTATIVES (HSCA)

Sir, as you instructed, as often as commitments permitted, the HSCA public hearings on the assassination of President John F. Kennedy were monitored. Informal contacts with Committee staff members during the course of business have occurred also. The monitoring and contacts have served to indicate clearly that the HSCA intends to elicit certain information from Director Webster, should he testify before it publicly or in executive session.

As you recall, the Committee has articulated items of information it seeks via an outline form which Mr. Mintz provided Director Webster on 9/8/78. As an adjunct to those items, it appears the HSCA may wish to ask the FBI to respond to such matters as follow, considering the regrettable possibility that the President of the United States might be assassinated at any time:

- Committee criticism - Investigative response - patchwork - reactive*
1. Whether or not the FBI has developed a task force organization, representative of all Bureau investigative, technical and scientific capabilities, which could be activated immediately at FBI Headquarters, possibly in a preplanned space with preallocated equipment.
Lacked detailed coordination under a single commander
 2. Whether or not the investigation would be directed by a single Bureau official, who could cut across all Divisional lines and be specifically responsible for ensuring that every facet of the investigation was fully explored, to the exclusion of any other duties.
Field and transitory devoted upon street agents
 3. Whether or not the organization of the investigation would provide for a single field commander, who would be designated to immediately take charge of all field resources at the scene, to the exclusion of any other duties.
W.C. int. - FBI unduly restrictive view of situation - needed more coordination
 4. Whether or not consideration had been given to having liaison representatives, from all involved agencies or departments, integrated into the Headquarters and/or field command structures to insure complete dissemination and availability of all information as required or appropriate.

do to what ever extent necessary

5. Whether or not the FBI has undertaken any effort, or is aware that any other agency has made any effort to formalize arrangements within the Executive Branch to insure that any autopsy would be performed or assisted by the most qualified forensic pathologist in the country. - *Grossly inadequate autopsy of JFK.* shd - pg 9
D 3

6. Whether or not the FBI would advocate or undertake special means to provide total investigative access to all media and private photographic or recording results from the crime scene. *Media travel w/ open market* Ran statement
pg 10
K

7. Whether or not the FBI would advocate or undertake special means to freeze all communications records for a specified period in order to insure availability should investigation require same (i.e. telephone and teletype records for six months prior and six months after the fact). *Also taken aspects.* statement
pg 11
K

8. Whether or not the FBI would advocate or undertake special means to insure immediate investigative access to banking and other financial transaction records as required. *importance in JFK as any conspiracy angle* Ran statement
pg 11
K

9. Whether or not the FBI would consider special investigative reporting procedures such as the taping and subsequent transcription of all key interviews or all interviews. *certain key witnesses did not agree w/ FBI reportings.* N-4

10. Whether the FBI would advocate or undertake special means to secure prompt technical surveillance of investigative targets, whether organizational or individual. *FBI did not fully utilize especially in King.* E-14
N-2

11. Whether or not the FBI maintains proactively, on a continuing basis, a list of recognized scientific experts in the forensic discipline or other appropriate disciplines and whether such a list would specify the location of certain sophisticated, scientific equipment which may not be available in house, but which could be accessed for assistance as required (i.e. experts and sophisticated equipment involved in photographic enhancement through digital analysis). *FBI would have called upon experts in neutron activation analysis* shd - pg 14
N-5
autpg 7

12. Whether or not the FBI would advocate or institute specific rules pertaining to the release of investigative information to the public via the media. *How leaders info to friendly media.* O

The above, while not all inclusive, are furnished for your consideration and in the event you may wish to provide same to those Divisions responsible for the preparation of any statement the Director may choose to make.

Thank you,

Drew J. Clark

FBI INVESTIGATIVE JURISDICTION IN POLITICAL ASSASSINATIONS

The FBI's jurisdiction to investigate political assassinations is clouded by the ambiguity of the term, "political assassinations." Set forth below are some statutes within the investigative jurisdiction of the FBI which may provide a predicate, depending upon the facts of the particular case.

PRESIDENTIAL ASSASSINATION, KIDNAPING, AND ASSAULT:

Title 18, U.S. Code, Section 1751, gives the FBI investigative jurisdiction in the assassination, kidnapping, assault, or attempted killing or kidnapping of the President, President-Elect, Vice President, or next in succession to the Office of President. The section also confers on the FBI investigative jurisdiction for conspiracy to commit the above acts. The Attorney General is authorized to pay \$100,000 for "information and services" concerning violation of this section. State and local jurisdiction is suspended if Federal jurisdiction is asserted. The FBI is authorized to request assistance from any Federal, state, or local agency including the Armed Forces, the Posse Comitatus Act, or other statute, rule, or regulation to the contrary notwithstanding. This section was effective August 28, 1965.

CONGRESSIONAL ASSASSINATION, KIDNAPING, AND ASSAULT:

The same basic provisions, with the exception of the reward provision, are set forth at Title 18, U.S. Code, Section 351, giving investigative jurisdiction in crimes of Congressional assassinations, kidnaping, and assault or attempted killing or kidnaping or conspiracy to kill or kidnap a Member of Congress or Member-of-Congress-Elect. This section was effective January 2, 1971.

FOREIGN OFFICIALS AND OFFICIAL GUESTS:

Title 18, U. S. Code, Sections 1116 and 1117 make it unlawful to kill a foreign official, official guest, or internationally protected person or to conspire to kill such person. Title 18, U.S. Code Section 1201 makes kidnaping or conspiring to kidnap such a person unlawful. Title 18, U. S. Code, Section 112 makes it unlawful to assault, strike, wound, imprison, or offer violence to or intimidate, coerce, threaten, or harass such a person. Sections 1116 and 1117 became effective, as amended, on October 8, 1976, and October 24, 1972, respectively. Section 1201 became effective, as amended, on August 6, 1956. Section 112 became effective, as amended, on October 8, 1976.

CIVIL RIGHTS VIOLATIONS:

Title 18, U.S. Code, Section 241 makes it unlawful to conspire, to injure, oppress, threaten, or intimidate any citizen "in the free exercise of his constitutional rights."

This statute provided predicate for the FBI's investigation into the Martin Luther King, Jr., assassination. Title 18, U.S. Code, Section 242 makes similar acts unlawful when done under color of law. These sections were effective in their current state as of April 11, 1968.

OTHER VIOLATIONS:

The foregoing violations are broadly applicable to many assassinations which could be characterized as "political." The statutes set forth below are of narrower application but they also form the basis for FBI jurisdiction, depending upon the facts of the particular case.

BOMBING - Title 18, U.S. Code, Section 844 (d) - (1), effective October 15, 1970, makes unlawful certain of the detailed acts which may be involved in "political assassinations" by bombing, such as, interstate transportation of explosives with intent to injure; use of telephone, mail, or other instrument of commerce to transmit a bomb threat; the bombing of U. S. property or institution or

organization receiving Federal financial assistance; possession of a bomb in a Government building; carrying or using a bomb in the commission of any Federal felony; and use of a bomb to damage property used in an activity affecting interstate commerce. FBI jurisdiction is concurrent with the Bureau of Alcohol, Tobacco and Firearms except where the motivation is political rather than the desire for personal or organizational gain in which case a Memorandum of Understanding gives the FBI exclusive jurisdiction.

CRIMES ON GOVERNMENT RESERVATION - The following sections of Title 18, U.S. Code, are capable of application in limited circumstances to political assassinations when such acts take place within the special maritime and territorial jurisdiction of the United States.

Section 1111 (Murder) effective as amended October 24, 1972;

Section 1113 (Attempt to Commit Murder or Manslaughter) effective as amended August 3, 1977.

Section 1201 (Kidnaping) effective as amended October 8, 1976.

Section 1363 (Destroying or Injuring Buildings or Property) effective June 25, 1948.

RI - Title 18, U.S. Code, Sections 1961 to 1963, effective as amended October 5, 1960, would provide an investigational predicate in situations where a person or persons involved in a pattern of racketeering activities would commit an assassination of a political figure in furtherance of that pattern of racketeering activity.

ELECTION LAW - Title 18, U. S. Code, Section 245 makes it unlawful to injure, intimidate, or interfere with a person because he is voting, qualifying to vote, campaigning as a candidate, or attempting to do so. This section was effective as of April 11, 1968.

Title 18, U.S. Code, Section 594 makes unlawful the intimidation or attempted intimidation of a person for the purpose of interfering with his right to vote for specified Federal candidates. This section is effective as of June 25, 1948.

In appropriate cases, these statutes may serve as predicates for FBI investigative jurisdiction.

ALIEN REGISTRATION - Title 22, U.S. Code, Section 612 requires the registration of foreign aliens. This could be a basis for a political assassination investigation by the FBI in circumstances where it is suspected that the assassination may have been the work of a foreign power. This section is effective as amended October 4, 1961.

FEDERAL TRAIN WRECK STATUTE - Title 18,

U.S. Code, Section 1991 makes it unlawful to enter a train with the intention to commit any unlawful violence.

Title 18, U.S. Code, Section 1992 makes the willful derailling, disabling, or wrecking of a train used in interstate or foreign commerce unlawful. This section is effective June 25, 1948. In appropriate circumstances these sections may form a basis for a Federal investigation of a political assassination.

AIRCRAFT PIRACY - Title 49, U.S. Code, Section 1472 makes unlawful the seizure or exercise of control by force or violence or threatened force of violence of an aircraft within the special aircraft jurisdiction of the United States. This section is effective, as amended, August 5, 1974.

Conceivably, such piracy could play a part in a political assassination and, if so, the statute would provide a basis for investigation by the FBI.

ASSAULTING THE PRESIDENT OF THE
UNITED STATES AND THREATS AGAINST THE
PRESIDENT OF THE UNITED STATES

I. Statute

The United States Congress passed and sent to the President an amendment to Title 18, U. S. Code, (Public Law 89-141) which provided for the application of Federal criminal law in instances of Presidential assassination, kidnaping, and assault. This law was approved by the President of the United States on August 28, 1965, and is specifically embodied in Chapter 84, Section 1751, Title 18, U. S. Code.

Persons designated as coming within the purview of this statute are as follows: The President, the President Elect, the Vice President, or, if there is no Vice President, the officer next in the order of succession to the office of President, the Vice President Elect, or any individual acting as President under the Constitution and laws of the United States.

Specifically, penalties are provided for the following offenses:

1. Killing or Kidnaping the President or Other Designated Person.

Punishment shall be as provided by Sections 1111 and 1112, Title 18, U. S. Code in those instances where the designated individual is killed. Where kidnaping is involved, the penalty is imprisonment for any term of years or for life or, if death resulted to the individual by death or imprisonment for any term of years or for life.

2. Conspiracy to Kill or Kidnap the President or Other Designated Person.

Punishment is provided by imprisonment for any term of years or for life or, if death results to the individual by death or imprisonment, for any term of years or for life.

3. Attempt to Kill or Kidnap the President or Other Designated Person.

Punishment as provided by the statute is imprisonment for any term of years or for life.

4. Assault on the President or Other Designated Person.

The statute provides for punishment by imprisonment of not more than ten years or fine of not more than \$10,000 or both.

The statute specifically authorizes the Attorney General to pay an amount not to exceed \$100,000 for information and services concerning a violation of this section.

If Federal investigative or prosecutive jurisdiction is asserted, such assertion shall suspend the exercise of jurisdiction by state or local authority until Federal action is terminated.

The statute provides for investigative jurisdiction to lie with the FBI.

There is a tenth section of the act which amends subsection (c) of Section 3486, Title 18, U. S. Code to provide that:

"Whenever in the judgement of a United States Attorney the testimony of any witness, or the production of books, papers, or other evidence by any witness, in any case or proceeding before any grand jury or court of the United States involving any violation of Section 1751 of Title 18 of the United States Code, . . . is necessary to the public interest, he, upon the approval of the Attorney General, shall make application to the court that the witness shall be instructed to testify or produce evidence subject to the provisions of this section, and upon order of the court such witness shall not be excused from testifying or from producing books, papers, or other evidence on the ground that the testimony or evidence required of him may tend to incriminate him or subject him to a penalty or forfeiture. But no such witness shall be prosecuted or subjected to any penalty or forfeiture for or on account of any transaction, matter, or thing concerning which he is compelled, after having claimed his privilege against self-incrimination, to testify or produce evidence, nor shall testimony so compelled be used as evidence in any criminal proceeding (except prosecution described in subsection (d) hereof, i.e., perjury or contempt) against him in any court."

The national importance of the offenses covered by the act was thought to require the authorization of immunity in this area, notwithstanding Congress' reluctance to enlarge existing immunity provisions. S. Rep. No. 498, 89th Congress, 1st Session 5 (1965); H. Rep. No. 488, 89th Congress, 1st Session 5 (1965). Only the United States Attorney, after careful consideration and with the approval of the Attorney General, is permitted to make applications for immunity. See Hearings, supra, p. 59.

Application of the immunity statute immunizes the witness against both state and Federal prosecution. Ullmann v. United States, 350 U.S. 422, 436 (1956). The restriction thus placed on the exercise of state power is justified by the paramount authority of Congress to secure the more effective exercise of Federal power. See ibid.

II. Venue

Prosecution should be initiated in the district in which the offense was committed, or if the offense was committed outside of the jurisdiction of any particular state or district prosecution should be as provided for in Section 3238, Title 18, U. S. Code (offense not committed in any district).

III. Background and Purpose of the Act

Prior to the enactment of this legislation, the President, Vice President, etc., were protected by Federal law only against oral as well as written threats upon their lives and persons (Section 871, Title 18, U. S. Code). While Secret Service was charged with the protection and security of the President, Vice President, their families, etc., (Section 3056, Title 18, U. S. Code), only local and state statutes covered attacks on the President, except if the attack should take place on a Government reservation over which the Federal Government exercised concurrent or exclusive jurisdiction.

This situation was graphically brought to light with the assassination of President John Fitzgerald Kennedy on November 22, 1963. Immediately thereafter, by letter dated November 25, 1963, the Director advised the Attorney General of this legislative void and cited the need for Federal jurisdiction over offenses of this nature.

The Congress, in studying various legislative proposals, based the assertion of Federal jurisdiction on the theory that murder of the President is a Crime Against the National Government. Since the injury suffered by the United States does not bear any

relation to the activities of the victim or the motives of the assailant, the statute does not require that the hostile act is engaged in (or because of) the performance of official duties (Senate report No. 498, 89th Congress, 1st Session). This is a requirement in the Assaulting a Federal Officer Statute.

Senate report No. 482, 89th Congress, 1st Session, when considering the suspension of local authority in cases of this nature, indicated such action would insure clear Federal jurisdiction in the investigation and prosecution of Presidential assailants by providing for unimpeded Federal jurisdiction to the extent necessary. However, suspension does not imply that the states cannot cooperate with Federal authorities during the course of any investigation.

The legislation, as adopted, implemented recommendations by the President's commission on the assassination of President Kennedy which urged Congress to adopt legislation which would:

"punish for murder, manslaughter of, attempt or conspiracy to murder, kidnaping of, and assault upon the President, Vice President, or other officer next in the order of succession to the office of President. . . whether or not the act is committed while the victim is in the performance of his official duties or on account of such performance." (Page 455, Report of the President's Commission).

IV. Departmental Interpretations

By memorandum No. 488, dated March 3, 1966, to all United States Attorneys, Fred M. Vinson, Jr., Assistant Attorney General of the Criminal Division, provided a legal analysis of the legislation.

Specifically, certain aspects of the legislation were defined and clarified as follows:

1. Killing the President

The statute incorporates by reference Sections 1111 and 1112 of Title 18. The former defines murder dividing it into two degrees - first and second. First degree murder is the premeditated killing or taking of a human life and is punishable by death unless the jury qualifies its verdict in which event punishment is life imprisonment. Second degree murder is any other kind of murder and is punishable by any term of imprisonment including life.

Section 1112 defines manslaughter as the unlawful killing of a human being without malice. Voluntary manslaughter is punishable by imprisonment for not more than ten years, and involuntary manslaughter is punishable by a fine of not more than \$1,000 or imprisonment for not more than three years or both.

2. Kidnaping the President

The statute does not define kidnaping. However, common law defines kidnaping as the forceable abduction and carrying away of a man, woman, or child from their own country and sending them to another. (Collier v. Vaccaro, 51 F. 2d, 17, 19, 4th Cir., 1931). Unlike the Federal Kidnaping Act (Section 1201, Title 18, U. S. Code), which authorizes the imposition of the death penalty for any injury to the victim, the Presidential Assassination Statute provides for the death penalty only if death results to the victim.

3. Attempt to Kill or Kidnap the President

The Criminal Division cites Congressional intent in House Report No. 488, 89th Congress, 1st Session, in defining an attempted killing indicating "proof of a preparation which came so reasonably close to consummation of the crime that it would have been executed had nothing interfered to prevent the further continuation of the activity," is sufficient to entertain prosecution.

In Hyde v. United States, 225, U.S., 347, the court held "intention and overt act may all be present without amounting to a criminal attempt--as if all that were done should be an agreement to murder a man fifty miles away and the purchase of a pistol for the purpose. There must be dangerous proximity to success. But when that exists the overt act is the essence of the offense."

Under the Model Penal Code, comment is made relative to the dangerous proximity doctrine as follows:

"In order to determine whether a given act constitutes an attempt the following factors are considered: the gravity of the offense intended, the nearness of the act to completion of the crime, and the probability that the conduct will result in the offense intended. The greater the gravity and probability, and the nearer the act to the crime, the stronger is the case for calling the act an attempt. The test is based on the assumption that the

purpose of punishing attempts is to deter undesirable behavior and that until the actor's conduct becomes sufficiently dangerous there is not adequate reason for deterring it. The assumption, as it relates to the law of attempts, is not, in our view, the right foundation for the liability. The primary purpose of punishing attempts is to neutralize dangerous individuals and not to deter dangerous acts."

4. Conspiracy to Kill or Kidnap the President

The conspiracy section is identical to the general conspiracy statute (18 U.S.C. 371) except that it is limited to the two objects of killing or kidnaping the President. This section does not preclude prosecution under the general conspiracy statute, but merely provides an increased penalty where the object of the conspiracy is to kill or kidnap the President. Cf. United States v. Bazzell, 187 F. 2d 878, 885 (7th Cir.), Cert. den., 342 U.S. 849 (1951).

5. Assaulting the President

There are several Federal Assault Statutes, but only in the Uniform Code of Military Justice, has Congress undertaken to define the offense. Article 128 of the Uniform Code (10 U.S.C. 928) provides that any person who "attempts or offers with unlawful force or violence to do bodily harm to another person, whether or not the attempt or offer is consummated, is guilty of assault." The Committee which considered the present act contemplated that the term "assault" would be understood according to its established meaning in the criminal law. The Supreme Court has said, in construing a criminal assault statute, that "an assault is ordinarily held to be committed merely by putting another in apprehension of harm whether or not the actor intends to inflict or is capable of inflicting that harm." Ladner v. United States, 358 U.S. 169, 177 (1958).

V. Jurisdiction

Use of the Army, Navy, and Air Force as "posse comitatus," Title 18, U. S. Code, Section 1385, prohibits the general use of the Army or Navy as a "posse comitatus." Title 18, Section 1751, (1) (Presidential Assassination Statute) specifically authorizes the FBI to request assistance from these military agencies, "any statute, rule, or regulation to the contrary notwithstanding."

A. Responsibility of U. S. Secret Service.

By statute, the Secret Service is charged with the protection of the President and other designated individuals. (Section 3056, Title 18, U. S. Code). In addition, the Secret Service is charged by Statute with the investigation of threats against the President and other designated persons. (Section 871, Title 18, U. S. Code). The Department has indicated since the Statute names the FBI as the agency to investigate violations of Section 1751, Title 18, U. S. Code, the FBI would therefore be responsible under the law to investigate under certain conditions violations over which the Secret Service had previously exercised its jurisdiction. Threats against the President and other designated persons which do not fall within the criteria set forth above would according to the Department continue to be investigated by the Secret Service under Section 871, Title 18, U. S. Code.

VI. Memorandum of Agreement Between the FBI and the Secret Service Regarding the Presidential Assassination Statute (PAS)

The full text of the agreement between the FBI and the Secret Service relating to the PAS is attached as Appendix A.

[REDACTED]

[REDACTED]

[REDACTED]

VII. Dissemination of Information

In 1966 the following agencies were notified in writing of the jurisdictional responsibilities of the FBI under Title 18, Section 1751, U. S. Code (PAS). These agencies, at

Secret
Service

that time, were requested to furnish the FBI with any information received which may indicate a possible violation of the PAS: Department of Defense; Director, Compliance Division, General Services Administration; U. S. Department of State; Central Intelligence Agency; U. S. Secret Service; National Security Agency; and Immigration and Naturalization Service.

The Manual of Investigative Operations and Guidelines (MIOG), Part I, Section 175-1.3, paragraph 2(c), relating to the receipt of information of a possible violation of Title 18, Section 1751, U. S. Code, instructs that:

Telephonically notify the nearest office of the Secret Service and where appropriate advise that the FBI has initiated investigation of a possible violation of Title 18, Section 1751, U. S. Code, and that information is being made available for whatever action Secret Service deems appropriate.

The MIOG, Part I, Section 175-2.1, paragraph 1(a), relating to Threats Against the President, instructs that:

b2 [REDACTED]

The full text of the MIOG instructions, Section 175, captioned, "Assaulting the President of the United States and Threats Against the President of the United States," is attached as Appendix B.

INVESTIGATIVE OPERATIONS PLAN IN THE EVENT OF AN ASSAULT UPON OR KILLING OF THE PRESIDENT OF THE UNITED STATES

I. Chain of Command

The Director of the FBI is responsible for all investigations conducted by the Bureau. He may delegate certain authority and fix responsibility for the handling of investigative matters to field commanders (Special Agent in Charge (SAC)) through the Associate Director and appropriate Assistant Director.

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The SAC carries out his responsibilities by directing his assistants and squad supervisors who, in turn, direct the efforts of the investigators.

II. Jurisdiction Over and Medical Examination of the Body of the President of the United States

[REDACTED]

Dept.
of
Defense

[REDACTED]

[REDACTED]

[REDACTED]

Dept.
of
Justice

[REDACTED]

[REDACTED]

XXXXXX
XXXXXX
XXXXXXFEDERAL BUREAU OF INVESTIGATION
FOIPA DELETED PAGE INFORMATION SHEET

2 Page(s) withheld entirely at this location in the file. One or more of the following statements, where indicated, explain this deletion.

- ☒ Deleted under exemption(s) b2 with no segregable material available for release to you.
- ☐ Information pertained only to a third party with no reference to you or the subject of your request.
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- ☐ Document(s) originating with the following government agency(ies) _____, was/were forwarded to them for direct response to you.

☒ Page(s) referred for consultation to the following government agency(ies); Dept. of Justice as the information originated with them. You will be advised of availability upon return of the material to the FBI.

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C

Additionally, the FBI maintains a computerized Personnel Information Network System (PINS), which identifies Special Agents possessing unique skills and qualifications which may be of critical value to the investigation. One such area is the existence of a computerized listing of all Special Agent pilots, their location, and their current pilot rating. These Special Agent pilots can be sent to the scene to fly aircraft already in place, or they can transport aircraft personnel and technical equipment to areas where needed.

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the 97th General Hospital, Frankfurt, Germany. The young officer was subsequently required to reimburse the Government for the cost of his wife's transportation. To cite another instance, a dependent wife accompanying an enlisted man stationed at the Office of the U. S. Naval Attaché and Naval Attaché for Air in Djakarta, Indonesia, was found by competent medical authority to require consultation and hospitalization for probable heart surgery. Air transportation at Government expense to the hospital at Clark Air Base, in the Philippine Islands, was denied her, following the Comptroller General's decision cited above.

The presence of personnel of the uniformed services throughout the world is required and authorized. It is often to the advantage of the Government, as well as of the member, for his family to accompany him. Medical care should be assured these dependents. It is worthy of note that the problem has been solved for officers and employees of the Foreign Service. Had the service members above been employed by the Foreign Service in Eritrea or Indonesia, transportation of their wives and necessary attendants to the hospital would have been paid for by the Government under the authority of section 14(a) of the Foreign Service Act Amendments of 1956 (22 U.S.C. 1157). Military personnel and their families are stationed in areas where adequate medical care is not available, as are officers and employees of the Foreign Service. For the same reasons which urged the passage of the above legislation for the Foreign Service, enactment of the enclosed proposal is recommended.

COST AND BUDGET DATA

Although having to pay the transportation costs of a sick dependent can prove catastrophic to a member of a uniformed service, the situation sought to be remedied by this proposal occurs so infrequently that the cost for all the uniformed services is relatively small. The cost is minimized in the enclosed draft bill by requiring that Government transportation facilities be utilized whenever practicable.

Sincerely yours,

PAUL H. NITZE,
Secretary of the Navy.

PRESIDENTIAL ASSASSINATION—PENALTIES

For text of Act see p. 642

House Report (Judiciary Committee) No. 488,

June 9, 1965 [To accompany H.R. 6097]

Senate Report (Judiciary Committee) No. 498,

July 21, 1965 [To accompany H.R. 6097]

Cong. Record Vol. 111 (1965)

DATES OF CONSIDERATION AND PASSAGE

House June 21, Aug. 12, 1965

Senate July 23, 1965

The Senate Report is set out.

SENATE REPORT NO. 498

THE Committee on the Judiciary, to which was referred the bill (H.R. 6097) to amend title 18, United States Code, to provide penalties for the
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PRESIDENTIAL ASSASSINATION

assassination of the President or the Vice President, and for other purposes, having considered the same, reports favorably thereon, with amendments, and recommends that the bill as amended do pass.

PURPOSE OF AMENDMENTS

Amendments No. 1 and No. 2. The purpose of these amendments is to provide that if Federal jurisdiction is asserted for a violation of this section, such assertion shall suspend the exercise of jurisdiction by a State or local authority under any applicable State or local law until Federal action is terminated. This would insure clear Federal jurisdiction in the investigation and prosecution of Presidential assailants by providing for unimpeded Federal jurisdiction to the extent necessary. However, suspension does not imply that the States cannot cooperate with the Federal authorities during the course of any investigation pursuant to this legislation.

Amendment No. 3. The purpose of amendment No. 3 is to make clear that the Federal Bureau of Investigation shall have jurisdiction over the investigation of violations of this act, and in the investigation of such violations may avail itself of the assistance of any Federal, State, or local agency, including the services of the Army, the Navy, and the Air Force, any statute, rule, or regulation to the contrary notwithstanding.

PURPOSE

The purpose of the proposed legislation, as amended, is to rectify the omission in Federal law by making it a Federal crime to kill, kidnap, or assault the President, the President-elect, the Vice President, or, if there is no Vice President, the officer next in the order of succession to the office of President of the United States, the Vice-President-elect, or any individual who is acting as President. In addition, it makes it a Federal crime to attempt, or to conspire, to kill, or kidnap any of the individuals designated.

STATEMENT

There was no Federal criminal jurisdiction with respect to the assassination of the President on November 22, 1963. It is anomalous that Congress has legislated in other ways to protect the safety of the Chief Executive and other Federal officers, but has never made the murder of or an attack on the President a Federal crime. Under existing Federal criminal law, title 18, United States Code, threatening harm to the President is a Federal offense (sec. 871), as is advocacy of the overthrow of the Government by assassination of any of its officers (sec. 2358). The murder of Federal judges, U. S. attorneys and marshals, and many other specifically designated Federal law enforcement officials is a Federal crime (sec. 1114); as is conspiracy to injure any Federal officer on account of, or while he is engaged in, the discharge of his official duty (sec. 372).

Notwithstanding these various criminal provisions covering other officials in Federal service, the Federal law today fails to assure full and complete Federal investigative and prosecutive jurisdiction over acts designed to harm the Chief Executive of the United States.

A primary advantage resulting from the enactment of this measure would be the assurance of clear Federal jurisdiction in the investigation and prosecution of Presidential assailants. Clear Federal jurisdiction in this

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area would minimize the conflict and confusion growing out of concurrent jurisdiction of Federal and State agencies. Enactment of this bill would mean that investigation of the acts covered and of any possibility of a future attempt would be conducted by Federal law enforcement officials. At present, Federal agencies participate only at the sufferance of local authorities. Enactment of the bill would also insure that the detention and protection of suspects accused of committing any of the acts against the President and Vice President would be under Federal control. A further value of such legislation would be that suspects would be protected by Federal practices and procedures in their trial and prosecution.

A committee amendment provides that the Federal Bureau of Investigation shall have jurisdiction over investigations of violations of this act and such investigations be the fixed responsibility of one agency. From the standpoint of investigative experience and expertise the Federal Bureau of Investigation has demonstrated that it has the know-how and the talent to conduct these investigations. The Federal Bureau of Investigation has demonstrated through its present close association with police departments throughout the country that it is able to work in concert with all law enforcement agencies.

It is self-evident that the murder of the President of the United States is a crime against the National Government. The committee restricted the coverage of the bill to the President and Vice President, and, in the absence of the Vice President, to the officer next in order of succession. (The bill also applies to any individual acting as President under the Constitution and laws of the United States and during the period between election and inauguration, to the President-elect and the Vice-President-elect.) The committee considers it unnecessary to require that the hostile act occur while the victim is engaged in (or because of) the performance of official duties. The injury suffered by the United States as a consequence of an assault on any of the officers specified in the bill does not bear any relationship to the activities of the victim at the time of the assault nor to the motives of the assailant. In this connection, the committee adopts the following statement made by Senator George F. Hoar in the 1902 debate on legislation seeking to make the assassination of the President a Federal crime:

* * * what this bill means to punish is the crime of interruption of the Government of the United States and the destruction of its security by striking down the life of the person who is actually in the exercise of the Executive power, or of such persons as have been constitutionally and lawfully provided to succeed thereto in case of a vacancy. It is important to this country that the interruption shall not take place for an hour * * *

This bill is designed to implement recommendations for a Federal criminal statute on the subject made in the "Report of the President's Commission on the Assassination of President Kennedy." After a thorough and painstaking investigation of the assassination of President Kennedy, the Commission urged that the Congress adopt legislation which would:

Punish the murder or manslaughter of, attempt or conspiracy to murder, kidnaping of and assault upon the President, Vice President, or other officer next in the order of succession to the Office of President, the President-elect and the Vice-President-

PRESIDENTIAL ASSASSINATION

elect, whether or not the act is committed while the victim is in the performance of his official duties or on account of such performance (at p. 455).

There have been a number of efforts in the past to make the assassination of the President a Federal crime. All such efforts have failed. A number of bills were introduced immediately following the assassination of President Kennedy. Approximately 50 measures on this subject have been introduced in the 89th Congress. A judiciary subcommittee of the House of Representatives conducted 2 days of hearings on May 26 and 27, 1965, in which the Deputy Attorney General and the Under Secretary of the Treasury, the former counsel to the President's Commission on the Assassination of President Kennedy, a representative of the American Bar Association, and congressional sponsors of this legislation appeared and testified.

The committee believes the need for this legislation is manifest and recommends the bill do pass.

ANALYSIS OF THE BILL

The bill would amend title 18 of the United States Code by inserting a new chapter 84 and a new section 1751—Presidential assassination, kidnapping, and assault; penalties.

Subsection (a)

This subsection would make the killing of the President of the United States, the President-elect, the Vice President, or if there is no Vice President, the officer next in the order of succession, the Vice-President-elect, or any individual acting as President, punishable by the penalties prescribed in sections 1111 and 1112 of title 18, United States Code.

Section 1111 provides the death penalty for murder in the first degree in the absence of a qualified verdict, or imprisonment for any term of years, or for life for murder in the second degree.

Section 1112 provides imprisonment for not more than 10 years for voluntary manslaughter, or imprisonment for not more than 3 years, or a fine of not more than \$1,000, or both, for involuntary manslaughter.

Subsection (b)

This subsection provides that the crime of kidnapping the President or other individual designated in subsection (a) be punishable by imprisonment for a term of years or for life. If death should result to the victim, then the death penalty would be permitted.

Subsection (c)

This subsection makes the attempt to kill or kidnap the President or other official designated in subsection (a) punishable by imprisonment for any term of years, or for life.

Subsection (d)

This subsection makes the conspiracy to kill or kidnap the President or other official designated in subsection (a) punishable by imprisonment for any term of years, or for life, with a permissible death penalty if the conspiracy results in the death of the victim.

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Subsection (e)

This subsection makes an assault upon the President or any other official designated in subsection (a) punishable by a fine of not more than \$10,000, or imprisonment for not more than 10 years, or both.

Subsection (f)

This subsection defines the terms "President-elect" and "Vice-President-elect" as used in this section to mean such persons as are the apparent successful candidates for the offices of President and Vice President, respectively, as ascertained from the results of the national general elections for electors of President and Vice President.

Subsection (g)

This subsection authorizes the Attorney General to pay rewards not exceeding \$100,000 for information and services concerning a violation of this section. The subsection also makes ineligible for such rewards Federal and local officials who furnish information or render services in the performance of their official duties.

Subsection (h)

This subsection provides that if Federal investigative and prosecutive jurisdiction is asserted for any of the prohibited acts, the exercise of jurisdiction by State or local authority shall be suspended until Federal action is terminated. In order to avoid opportunities for confusion and conflict accompanying concurrent Federal and State jurisdiction in this area, the subsection provides for unimpeded Federal jurisdiction to the extent necessary.

Subsection (i)

This subsection provides that violations of this section shall be investigated by the Federal Bureau of Investigation. Assistance may be requested from any Federal, State, or local agency, including the Army, Navy, and Air Force, any statute, rule, or regulation to the contrary notwithstanding.

Section 2

This provision amends section 3486 of title 18, United States Code, the general immunity statute, by making the provisions of that statute applicable to grand jury or court proceedings involving any violation of this bill.

Under section 3486, only the U. S. attorney, upon approval of the Attorney General, is permitted to make application to the court that a witness, after invoking his privilege against self-incrimination, be instructed to testify or produce evidence. In such circumstances, section 3486 provides that the witness will not thereafter be subjected to criminal prosecution, except for perjury or contempt, on account of such compelled testimony.

Although the committee is reluctant to enlarge existing immunity provisions, it believes that successful detection and prosecution of offenses covered by this bill is of such national importance as to require immunity authorization in this area.

PRESIDENTIAL ASSASSINATION

Attached hereto and made a part hereof for the information of the Senate is a listing of the general statutes providing the death penalty for violations thereof:

Atomic Energy Act—Violations and conspiracies to commit such violations (42 U.S.C. 2272, 2274, 2275, and 2276).

Bank robbery (robbery of a bank or savings and loan association resulting in the death or kidnaping of a person) (18 U.S.C. 2113(e)).

Espionage (committing or attempt to commit espionage and conspiring to do so) (18 U.S.C. 794).

Kidnaping, if the victim has not been released unharmed and conspiring to do so (18 U.S.C. 1201(a) (c)).

Killing certain Federal officers and employees (18 U.S.C. 1114).

Murder in the first degree within the special maritime and territorial jurisdiction of the United States (18 U.S.C. 111).

Narcotics Control Act (furnishing narcotics to minors) (21 U.S.C. 176 (b)).

Rape within the special maritime and territorial jurisdiction of the United States (18 U.S.C. 2031).

Trainwrecking, which results in the death of a person (18 U.S.C. 1992).

Treason (18 U.S.C. 2381).

Willfully damaging motor vehicles or aircraft, if death results to any person (18 U.S.C. 34).

Attached hereto and made a part of this report is a letter dated March 8, 1965, from the Attorney General of the United States to the Vice President, recommending the introduction of this legislation.

OFFICE OF THE ATTORNEY GENERAL,
Washington, D. C., March 8, 1965.

THE VICE PRESIDENT,
U. S. Senate, Washington, D. C.

DEAR MR. VICE PRESIDENT: Enclosed for your consideration and appropriate reference is a legislative proposal to amend title 18, United States Code, to provide penalties for the assassination of the President or the Vice President, and for other purposes.

The assassination of President Kennedy and ensuing events focused attention on an anomaly in Federal law: it is not a Federal crime to assassinate the President of the United States, nor do Federal investigative agencies have absolute jurisdiction to investigate the assassination of a President. Following the death of President Kennedy, there was no clear basis for the exercise of Federal investigative jurisdiction, and when the assassin was apprehended, Federal authorities were unable to assert authority and take him into custody for questioning and safekeeping. The tragedy which resulted from this inability to act is too well known to require further detailing here.

There can be no doubt that a statute should be enacted to make it a Federal crime to kill the President or deliberately injure him in any way. The President is the one person through whom the executive branch of the Government operates. He is Commander in Chief of our military forces and is vital to the peace and safety of the country. Although every reasonable protective measure is taken to insure the safety of the President, the very nature of his office requires him to be exposed to unanticipated dangers. Accordingly, in view of the essential nature of the Office of the President and the hazards attendant to it, it is essential that it be a Federal crime to harm him or his immediate successor.

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LEGISLATIVE HISTORY

The enclosed proposal seeks to rectify the omission in Federal law by making it a Federal crime to kill, kidnap, or assault the President, the President-elect, the Vice President, or other officer next in the order of presidential succession, the Vice President-elect, or any individual who is acting as President. In addition, it makes it a Federal crime to endeavor or attempt, or to conspire, to kill, or kidnap any of the individuals designated. Two provisions are included to aid in the solution and prosecution of a violation of the proposed statute. One of these would authorize the Attorney General to pay rewards up to \$100,000 for information leading to the detection of any violator, while the other would authorize the compelling of testimony concerning a violation and the granting of immunity therefor. Finally, to avoid any conflict between Federal and State jurisdiction, or any confusion as to whose authority shall control, a provision is included under which the assertion of Federal investigative or prosecutive jurisdiction under the proposed statute would preclude the exercise of jurisdiction by State or local authorities to such extent as the Attorney General of the United States directs.

The proposal was drafted to implement recommendations contained in the "Report of the President's Commission on the Assassination of President Kennedy." The Secretary of the Department of the Treasury joins me in submitting it to the Congress. It is the belief of both of us that the proposal would be an effective aid in preventing future acts of violence against the President, as well as in solving such crimes if they should occur. We believe that there is an urgent need for this legislation, and for these reasons, its early introduction and prompt consideration is requested.

The Bureau of the Budget has advised that there is no objection to the submission of this proposal from the standpoint of the administration's program.

Sincerely,

NICHOLAS DEB. KATZENBACH,
Attorney General.

COPYRIGHT PROTECTION—EXTENSION

For text of Act see p. 643

House Report (Judiciary Committee) No. 369,

May 25, 1965 [To accompany H.J.Res. 431]

Senate Report (Judiciary Committee) No. 548,

Aug. 10, 1965 [To accompany H.J.Res. 431]

Cong. Record Vol. 111 (1965)

DATES OF CONSIDERATION AND PASSAGE

House June 7, 1965

Senate Aug. 12, 1965

The Senate Report is set out.

SENATE REPORT NO. 548

THE Committee on the Judiciary, to which was referred the joint resolution (H.J.Res. 431) extending the duration of copyright protection in certain cases, having considered the same, reports favorably thereon without amendment and recommends that the joint resolution do pass.

**CHAPTER 81--PRESIDENTIAL ASSASSINATION,
KIDNAPING, AND ASSAULT**

Sec.

1751. Presidential assassination, kidnaping, and assault; penalties.

§ 1751. Presidential assassination, kidnaping, and assault; penalties

(a) Whoever kills any individual who is the President of the United States, the President-elect, the Vice President, or, if there is no Vice President, the officer next in the order of succession to the office of President of the United States, the Vice-President-elect, or any individual who is acting as President under the Constitution and laws of the United States, shall be punished as provided by sections 1111 and 1112 of this title.

(b) Whoever kidnaps any individual designated in subsection (a) of this section shall be punished (1) by imprisonment for any term of years or for life, or (2) by death or imprisonment for any term of years or for life, if death results to such individual.

(c) Whoever attempts to kill or kidnap any individual designated in subsection (a) of this section shall be punished by imprisonment for any term of years or for life.

(d) If two or more persons conspire to kill or kidnap any individual designated in subsection (a) of this section and one or more of such persons do any act to effect the object of the conspiracy, each shall be punished (1) by imprisonment for any term of years or for life, or (2) by death or imprisonment for any term of years or for life, if death results to such individual.

(e) Whoever assaults any person designated in subsection (a) of this section shall be fined not more than \$10,000 or imprisoned not more than 10 years, or both.

(f) The terms "President-elect" and "Vice-President-elect" as used in this section shall mean such persons as are the apparent successful candidates for the offices of President and Vice President, respectively, as ascertained from the results of the general elections held to determine the electors of President and Vice President in accordance with title 3, United States Code, sections 1 and 2.

(g) The Attorney General of the United States, in his discretion, is authorized to pay an amount not to exceed \$100,000 for information and services concerning a violation of this section. Any officer or employee of the United States or of any State or local government

CH. 51 PRESIDENTIAL ASSASSINATION, ETC. 13 § 1751

who furnishes information or renders service in the performance of his official duties shall not be eligible for payment under this subsection.

(b) If Federal investigative or preventive jurisdiction is asserted for a violation of this section, such assertion shall suspend the exercise of jurisdiction by a State or local authority, under any applicable State or local law, until Federal action is terminated.

(c) Violations of this section shall be investigated by the Federal Bureau of Investigation. Assistance may be requested from any Federal, State, or local agency, including the Army, Navy, and Air Force, any statute, rule, or regulation to the contrary notwithstanding.

Added Pub.L. 89-141, § 1, Aug. 23, 1965, 79 Stat. 530.

Historical Note

Legislative History. For legislative history U.S. Code Cong. and Adm. News, p. history and purpose of Pub.L. 89-141, see 204.

Cross References

Wire or oral communications, authorization for interception, to provide evidence of offenses under this section, see section 2501 of this title.
Witnesses and evidence, compelling testimony of violations involving this section see section 2502 of this title.

Library References

Assault and Battery § 2
Conspiracy § 20
Homicide § 21
Kidnaping § 2
Riots § 2 et seq.
States § 210.

C.J.S. Assault and Battery § 1 et seq.
C.J.S. Conspiracy § 21
C.J.S. Homicide § 2
C.J.S. Kidnaping § 1, 2
C.J.S. Riots § 1-3
C.J.S. States § 1, 7.

16 U.S.C. CRIMES AND CRIMINAL PROCEDURE

CHAPTER 84-PREIDENTIAL ASSASSINATION, KIDNAPING, AND ASSAULT

Sec. 1101. Temporary residence of the President

18 Stat. 310, as amended by Public Law 86-36, Title V, § 20, Jan. 2, 1979, 83 Stat. 1221, without addition to existing law.

§ 1101. Presidential assassination, kidnapping, and assault; penalties

Notes to Notes

Definition 2
Executive privilege 2
Exemption 1

1. Exemption

Definition of "executive privilege" was not appropriate in determining whether a defendant's request for information from the President of the United States was a request for information in connection with an attempted assassination of the President. However, privilege may be asserted in any proceeding to enforce the law. U.S. v. [redacted], 443 F.2d 1171, 1172 (D.C. Cir. 1971).

No holding, even if the President is above the law, is appropriate in the present case. The President is not a person who is entitled to special treatment. The President is a person who is entitled to special treatment.

Thus, similarly, where the President himself is a participant with respect to an alleged criminal act, the President must be treated as any other person would be. Id.

2. Executive privilege

Claim of "Executive Privilege" is not absolute; extent, if any, of the privilege is a question ultimately for the court. U.S. v. [redacted], 443 F.2d 1171, 1172 (D.C. Cir. 1971).

3. Definition

Although evidence is relevant to incumbent President of the United States to the extent that it is relevant to the President's official duties, the President would not be entitled to claim a right to prevent his official duties from being disclosed. U.S. v. [redacted], 443 F.2d 1171, 1172 (D.C. Cir. 1971).

§ 1102. Temporary residence of the President

(a) It shall be unlawful for any person or group of persons—

(1) willfully and knowingly to enter or remain in

(i) any building or grounds designated by the Secretary of the Treasury as temporary residences of the President or as temporary offices of the President and his staff, or

(ii) any ported, cordoned off, or otherwise restricted area of a building or grounds where the President is or will be temporarily visiting;

in violation of the regulations governing ingress or egress thereto:

(2) with intent to impede or disrupt the orderly conduct of Government business or official functions, to engage in disorderly or disruptive conduct in, or within such proximity to, any building or grounds designated in paragraph (1) when, or so that, such conduct, in fact, impedes or disrupts the orderly conduct of Government business or official functions;

(3) willfully and knowingly to obstruct or impede ingress or egress to or from any building, grounds, or area designated or enumerated in paragraph (1); or

(4) willfully and knowingly to engage in any act of physical violence against any person or property in any building, grounds, or area designated or enumerated in paragraph (1).

(b) Violation of this section, and attempts or conspiracies to commit such violations, shall be punishable by a fine not exceeding \$500 or imprisonment not exceeding six months, or both.

(c) Violation of this section, and attempts or conspiracies to commit such violations, shall be prosecuted by the United States attorney in the Federal district court having jurisdiction of the place where the offense occurred.

(d) The Secretary of the Treasury is authorized—

(1) to designate by regulations the buildings and grounds which constitute the temporary residences of the President and the temporary offices of the President and his staff, and

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PART I

SECTION 175. ASSAULTING THE PRESIDENT OF THE UNITED STATES AND
THREATS AGAINST THE PRESIDENT OF THE UNITED STATES

175-1 ASSAULTING THE PRESIDENT OF THE UNITED STATES

175-1.1 Statute

Title 18, USC, § 1751

175-1.1.1 Elements

- (1) Whoever kills, kidnaps, assaults, or
- (2) Attempts to kill or kidnap, or
- (3) Conspires to kill or kidnap
- (4) The President of the United States or other designated

person.

175-1.2 Definitions

(1) The Department has indicated Congress intended that the common law definition of the term "assault" be applied to this statute. Assault is defined in U.S. v. Hand, (26 Fed. Cas. 103):

"An assault is an offer or attempt by force to do a corporal injury to another; as if one person strike at another with his hands, or with a stick, and misses him; for if the other be stricken, it is a battery, which is an offense of a higher grade. Or if he shake his fist at another or present a gun, or other weapon, within such distance as that a hurt might be given; or drawing a sword, and brandishing it in a menacing manner. But it is essential to constitute an assault, that an intent to do some injury should be coupled with the act; and that intent should be to do a corporal hurt to another."

(2) Use of Army, Navy, and Air Force as "posse comitatus" Title 18, USC, § 1385, prohibits the general use of the Army or Air Force as a posse comitatus. Section 1751 (i) specifically authorizes the FBI to request assistance from these military agencies, "any statute, rule, or regulation to the contrary notwithstanding."

(3) President-elect and Vice-President-elect - These terms are defined in Title 18, USC, § 1751 (f).

175-1.3 Jurisdiction

Title 18, USC, § 1751 (i), states in part "violations of this section shall be investigated by the Federal Bureau of Investigation."

175-1.3.1 Actual Assault, Killing or Kidnaping

The FBI is responsible for the investigation of any actual assault, killing or kidnaping of those individuals designated in the statute.

175-1.3.2 Conspiracy to Kill or Kidnap

[The FBI shall immediately investigate as an urgent matter any credible allegation of conspiracy to kill or kidnap those individuals designated in this statute.]

SECTION 175.**ATTEMPTS AGAINST THE PRESIDENT OF THE UNITED STATES AND
THREATS AGAINST THE PRESIDENT OF THE UNITED STATES****175-1.3.3 Attempts to Kill and Kidnap**

The FBI shall investigate actual attempts to kill or kidnap. An actual attempt to kill or kidnap, even on the part of an individual acting alone without coconspirators when there is activity, such as obtaining the instruments, means, or other necessities, so as to indicate an effort by the individual to consummate the attempt, would likewise be investigated by the FBI.

175-1.3.4 Attempted Assault

The common law definition of assault includes the concept of an attempt falling within the definition of the term "assault." Accordingly, the FBI would investigate such attempted assaults whenever there exists clear-cut physical action on the part of an individual sufficient to cause apprehension of personal injury to an individual designated in the statute.

175-1.3.5 Responsibility of U.S. Secret Service

By statute, the Secret Service is charged with the protection of the President and other designated individuals. (Title 18, USC, § 3056.) In addition, the Secret Service is charged by statute with the investigation of threats against the President and other designated persons. (Title 18, USC, § 871.) The Department has indicated since the statute names the FBI as the agency to investigate violation of Title 18, USC, § 1751, the FBI would therefore be responsible under the law to investigate under certain conditions violations over which the Secret Service had previously exercised its jurisdiction. Threats against the President and other designated persons which do not fall within the criteria set forth above would, according to the Department, continue to be investigated by the Secret Service under Title 18, § 871.

175-1.3.6 Rewards

Section 1751 (g) provides for the Attorney General to pay an amount not to exceed \$100,000 for information and services concerning a violation of the statute. Any request for payment or consideration for payment of a reward should be referred to FBIHQ immediately by the most expeditious means.

175-1.3 Investigative Procedure

(1) Each complaint shall receive immediate priority investigative attention to expeditiously resolve the situation and where necessary to locate and take into custody those individuals who are in violation of the statute. It is imperative that there be no delay in handling of any complaints under this statute. Each SAC will be held personally responsible to insure that each complaint is thoroughly and vigorously pursued. It shall further be the personal responsibility of each

PART I

SECTION 175. ASSAULTING THE PRESIDENT OF THE UNITED STATES AND
THREATS AGAINST THE PRESIDENT OF THE UNITED STATES

SAC to insure Federal, state and local agencies are promptly alerted where appropriate.

(2) Upon receipt of each complaint involving a possible violation of this statute, the field should take action in accordance with the following:

- (a) Immediately initiate intensive investigation utilizing all available manpower where appropriate.
- (b) Advise FBIHQ by telephone of the facts of the complaint.
- (c) Telephonically notify the nearest office of the Secret Service and where appropriate advise that the FBI has initiated investigation of a possible violation of Title 18, USC, Section 1751, and the information is being made available for whatever action Secret Service deems appropriate. The name of the individual to whom this information is furnished should be obtained.

(d) [REDACTED]

(e) [REDACTED]

(f) [REDACTED]

b2

175-1.5 Penalties

- (1) First degree murder - maximum - death; minimum - life imprisonment (upon recommendation of jury) (Section 1111).
- (2) Second degree murder - maximum - life; minimum - any term of years (Section 1111).
- (3) Voluntary manslaughter - maximum - ten years (Section 1112).
- (4) Involuntary manslaughter - maximum - three years or \$1,000, or both (Section 1112).

175-1.6 Venue

Prosecution should be initiated in the district in which the offense was committed or if the offense was committed out of the jurisdiction of any particular state or district, prosecution should be as provided for in Title 18, USC, Section 3238 (offense not committed in any district).

175-1.7 Character

Assaulting, Killing, Kidnaping (whichever appropriate) the

SECTION 175. ASSAULTING THE PRESIDENT OF THE UNITED STATES AND
THREATS AGAINST THE PRESIDENT OF THE UNITED STATES

President or Vice-President (whichever appropriate) of the United States.

175-2 THREATS AGAINST THE PRESIDENT OF THE UNITED STATES AND OTHER
PERSONS PROTECTED BY THE U. S. SECRET SERVICE

175-2.1 Dissemination of Information Regarding Threats

(1) Title 18, USC, Section 3056, (in part) authorizes the Secret Service, subject to the direction of the Secretary of the Treasury, to protect the person of the President of the U. S., the members of his immediate family, the President-elect, the Vice-President, or other officer next in order of succession to the office of the President, and the Vice-President-elect, together with a former President, at his request, for a reasonable period after he leaves office. Therefore, any information indicating the possibility of an attempt against the person or safety of the President or the other persons aforementioned, must be referred immediately in accordance with the following:

(a) [REDACTED]

(b) [REDACTED]

(c) [REDACTED]

175-2.2 [REDACTED]

175-2.2.1 [REDACTED]

(1) [REDACTED]

(a) [REDACTED]

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SECTION 175. ASSAULTING THE PRESIDENT OF THE UNITED STATES AND
THREATS AGAINST THE PRESIDENT OF THE UNITED STATES

(4)

(5)

(6) It is the responsibility of each SAC to insure that the above instructions are administered with good judgement in each instance.

175-2.3 Responsibility Regarding Dissemination

(1) All field and FBIHQ Agent personnel must be completely familiar with the Bureau's policy and procedures covering the FBI's responsibilities for dissemination of information to the Secret Service concerning the President and other persons listed in Item 175-2.1 (1) above.

(2) All field and FBIHQ Agent personnel must be constantly alert to any and all information coming to their attention through their case or otherwise and insure that appropriate action is taken to see that same is promptly disseminated to Secret Service in accordance with existing policy and procedures. Resolve all doubts in favor of as liberal a dissemination policy as practicable.

(3) SACs and FBIHQ Division heads must periodically spot-check this matter for proper handling and must remind Agent personnel periodically at conferences of the policy and procedures concerning this matter.

CONGRESSIONAL ASSASSINATION,
KIDNAPING, AND ASSAULT

I. Background and Purpose of the Act

On January 2, 1971, the Omnibus Crime Control Act of 1970, P.L. 91-644, became effective. Title IV of this Act, providing protection for Members of Congress, established a new Section 351 and amended Section 2516 of Title 18, United States Code. These provisions were added by a floor amendment offered by Senator McClellan on October 8, 1970, and are basically the same legislation that had passed the Senate earlier on that date as S. 642. The title IV provisions, as part of H.R. 17,825, received minimal mention in the Reports or floor discussion, thus Senate Report No. 91-1249, 91st Cong., 2d Sess. (1970) and debate on S. 642 contain the bulk of the applicable legislative history.

Prior to this legislation there were no specific statutes covering the (1) killing, (2) kidnaping, (3) attempting to kill or kidnap, (4) conspiring to kill or kidnap, or (5) assaulting of a Member of Congress or Member-of-Congress-Elect. Criminal attacks directed against a Member of Congress would have been pursued under one of our general criminal statutes (i.e., assaults within the special maritime and territorial jurisdictions, 18 U.S.C. 113), where applicable, otherwise reliance was upon State and local statutes.

This legislation made it a Federal offense to kill or kidnap any Member of Congress or Member-of-Congress-Elect; to attempt to conspire to commit such offenses, or to assault such an individual. S. Rep. supra. Available records indicate that between 1850 and 1971 there were only seven attacks on Senators and nine on Congressmen. S. Rep. supra., 6,7. Although quantitatively the number of assassinations or attempted assassinations was small, a comparison of our history to the other nations of the world indicates that the level of assassination in the United States was high. S. Rep., supra 2. It was the hope of Congress that passage of this legislation would prevent any further acts of this nature, and that should such violence occur, it would provide an appropriate forum for the trial of any accused of such violence. S. Rep., supra. 7.

In enacting this legislation the Congress acted well within its constitutional powers, as the acts denounced have a substantial relation to the execution of the powers of Congress, indeed, assassination goes to the heart of the very existence of Congress. Under the Incidental Powers granted to Congress by the "necessary and proper clause," Art. I, Sec. 8, cl. 18 of the Constitution, it is universally conceded that Congress has the power to create, define and punish crimes and offenses whenever necessary to effectuate the objects of the Federal Government.

See United States v. Fox, 95 U.S. 670, 672 (1877); United States v. Barnow, 239 U.S. 74 (1915) (court found predecessor to 18 U.S.C. 912, making impersonation of an officer or employee of the United States a Federal offense, constitutional), and Barrett v. United States, 82 F. 2d 528, 534 (7th Cir., 1936) (established the constitutionality of the predecessor of 18 U.S.C. 1114, which makes killing various officers of the United States a Federal offense).

II. Statute

On January 2, 1971, the Omnibus Crime Control Act of 1970 (P.L. 91-644, 84 Stat. 1880), became effective. Title IV of this Act provided new legislation (18 U.S.C. 351) making it a Federal offense to: 1) kill; 2) kidnap; 3) attempt to kill or kidnap; 4) conspire to kill or kidnap; or 5) assault, a Member of Congress or a Member-of-Congress-Elect. In addition, Title IV amended 18 U.S.C. 2561 to allow the interception of wire or oral communications and the use of the "transactional immunity" authority provided under 18 U.S.C. 2516, to investigate violations of the new statute.

Specifically, the Act provided as follows:

"(a) Whoever kills any individual who is a Member of Congress or a Member-of-Congress-Elect shall be punished as provided by sections 1111 and 1112 of this title.

"(b) Whoever kidnaps any individual designated in subsection (a) of this section shall be punished (1) by imprisonment for any term of years or for life, or (2) by death or imprisonment for any term of years or for life, if death results to such individual.

"(c) Whoever attempts to kill or kidnap any individual designated in subsection (a) of this section shall be punished by imprisonment for any term of years or for life.

"(d) If two or more persons conspire to kill or kidnap any individual designated in subsection (a) of this section and one or more of such persons do any act to effect the object of the conspiracy, each shall be punished (1) by imprisonment for any term of years or for life, or (2) by death or imprisonment for any term of years or for life, if death results to such individual.

"(e) Whoever assaults any person designated in subsection (a) of this section shall be fined not more than \$5,000, or imprisoned not more than one year, or both; and if personal injury results, shall be fined not more than \$10,000, or imprisoned for not more than ten years, or both.

"(f) If Federal investigative or prosecutive jurisdiction is asserted for a violation of this section, such assertion shall suspend the exercise of jurisdiction by a State or local authority, under any applicable State or local law, until Federal action is terminated.

"(g) Violations of this section shall be investigated by the Federal Bureau of Investigation. Assistance may be requested from any Federal, State, or local agency, including the Army, Navy, and Air Force, any statute, rule, or regulation to the contrary notwithstanding."

III. Departmental Interpretation

By letter dated February 22, 1971, captioned, "Congressional Assassination, Kidnaping, and Assault," the Criminal Division of the Department provided a legal analysis of the legislation.

Specifically, certain effects of the legislation were defined and classified as follows:

1. Killing a Member of Congress; 18 U.S.C. 351 (a)

"Whoever kills any individual who is a Member of Congress or a Member-of-Congress-Elect shall be punished as provided by sections 1111 and 1112 of this title."

The statute incorporates by reference Sections 1111 and 1112 of Title 18, and these sections should be consulted for definitions of the various substantive homicides and the applicable penalty.

Member of Congress - has been defined as "one who is a component part of the Senate or House of Representatives, . . . one who is sharing the responsibilities and privileges of membership." United States v. Dietrich. 126 F. 676, 681 (8th Cir., 1904). It is our view that the membership of Congress includes not only the presently constituted membership of one hundred Senators and four hundred thirty-five Congressmen, but also those representatives or delegates for special geographical divisions who are extended the privileges of membership,

such as the Resident Commissioner from Puerto Rico and the new Non-Voting Delegate from the District of Columbia. See Act of September 22, 1970, Public Law 91-405, title II, section 202(a), 84 Stat. 845 (Non-Voting Delegate from the District of Columbia to have Privileges granted a Representative.) Note: Also, in our view the Vice-President would be classed as a Member-of-Congress. However, any prosecutions for incidents involving this official should be pursued under 18 U.S.C. 1751, the Presidential assassination statute, so as to allow use of the more liberal assault provision and reward provision contained in the statute.

Member of Congress-Elect - is one who has been certified by the usual state, or local, certifying official, as having been elected to one of the offices discussed above. This term does not encompass a Senator appointed under the 17th Amendment, pending his entry upon the office, though, of course, thereafter he is a member.

Unlike 18 U.S.C. 1114 (protection of officers and employees of the United States) these provisions do not require that the attack occur while the victim is engaged in, or be on account of the performance of his official duties. S. Rep. supra. 7. Therefore, any incident involving a Member of Congress or Member-of-Congress-Elect, would be within these provisions regardless of the timing or motive of the attack in question. As the statute contains no express territorial limitation and relates to activities which directly tend to impair the functioning of an institution vital to the Nation's Government, we conclude that the statute has full extraterritorial application. Compare United States v. Roderiquez, 182 F. Supp. 479 (S.D. Col., 1960) aff'd sub nom. Rocha v. United States, 288 F. 2d 545 (9th Cir., 1961).

As with section 1114 and 1751 of title 18, United States Code, the official status of the victim is merely the basis upon which Federal jurisdiction is asserted. Knowledge of the official status of the victim is not an element of the offense itself. See United States v. Kartman, 417 F. 2d 893 (9th Cir., 1969); Hearings on H.R. 6007 Before Subcommittee No. 4 of the House Committee on the Judiciary, 89 Cong., 1st. sess. 33 (1965).

2. Kidnaping a Member of Congress; 18 U.S.C. 351(b)

"Whoever kidnaps any individual designated in subsection (a) of this section shall be punished (1) by imprisonment for any term of years or for life, or (2) by death or imprisonment for any term of years or for life, if death results to such individual."

This section has been included even though there has never been an attempt to kidnap a Member of Congress. S. Rep. supra. p. 6-7.

As with the Federal Kidnaping Act (18 U.S.C. 1201), this statute does not attempt to define the term "kidnap." Blackstone in his Commentaries indicates that the English Common Law view, is that "kidnaping" meant to forcibly abduct or steal and carry away a person from their own country to another. 2 Bl. Comm. 219. See Collier v. Vaccaro, 51 F. 2d 17, 19 (4th Cir. 1931). In Gooch v. United States, 82 F. 2d 534, 536 (10th Cir. 1936), the common law view was construed to mean "to carry from one state into another state." Although this is the English common law view, it was not adopted in that form in the United States. Instead, the early cases dispensed with the need to carry out of the country, and questioned the need to carry beyond the boundaries of the state. See State v. Rollins, 8 N.H. 550, 567 (1837). The definition is perhaps best stated as "a false imprisonment aggravated by conveying the imprisoned person to some other place." 2 Bish Crim. Law Section 750 (9th Ed.). This then is the common law definition as adopted in the United States. In any event, the term is used in its generic sense in this statute and to fulfill the purpose intended by Congress, protection of its members, it should be given a broad scope and should not be limited by geographical considerations beyond the element of "carrying away" the victim.

Unlike 18 U.S.C. 1201, under section 351 the designated investigative agency, the Federal Bureau of Investigation, can commence its investigation immediately without the need to rely on any presumption such as the 24 hour provision of 18 U.S.C. 1201 (b). Under section 351 (b) enhanced punishment, including the death penalty, is imposable if death results to the victim. This provision is narrower than section 1201's requirement, "unless the victim be released unharmed," and implies a casual relationship between the act of kidnaping and the death as a condition for its application. The usual analysis for proximate cause in kindred situations e.g. homicide, appears applicable. There must be cause in fact ("but for," etc.) plus factors making it reasonable to relate the kidnaping to the death rather than to some independent or intervening cause. Trial by either judge or jury can result in a death penalty, thus the defect in 18 U.S.C. 1201, (see United States v. Jackson, 390 U.S. 570 (1968) precluding imposition of the death penalty under 1201 is not present in section 351.

3. Attempts to Kill or Kidnap a Member of Congress;
18 U.S.C. 351 (c)

"Whoever attempts to kill or kidnap any individual designated in subsection (a) of this section shall be punished by imprisonment for any term of years or for life."

This provision provides for punishment of attempts to kill or kidnap a Member of Congress.

As with other such provisions in the Federal Criminal Code, this section does not provide a definition of the term "attempt." At present there is no clear line of approach which could be regarded as the "Federal law" on the question, with Federal law being, at present, unclear as to when preparation ends and attempt begins. See Final Report of the National Commission on Reform of Federal Criminal Laws, p. 67. The Federal approach can be generally divided into two main lines of cases, representing the major "tests" in the area:

1) Dangerous Proximity Test - adopted by Judge Learned Hand in a case in which the defendant was arrested before passing classified government documents, which were in her purse, to her paramour:

(P)reparation is not an attempt. But some preparations may amount to an attempt. It is a question of degree. If the preparation comes very near to the accomplishment of the act, the intent to complete it renders the crime so probable that the act will be a misdemeanor, although there is still a locus poenitentiae, in the need of a further exertion of the will to complete the crime. (Emphasis added.) United States v. Coplon, 185 F. 2d 629, 633 (2d Cir. 1950) (quoting Holmes, J., in Commonwealth v. Peaslee, 177 Mass. 267, 272 (1901)), cert. den., 342 U.S. 920 (1952).

2) Any Act or Endeavor Test - a more recent development, this concept can be found in a case in which a defendant was charged with using communication facilities in attempting to commit the crime of illegally importing narcotic drugs, having mailed a letter to a Mexican manufacturer of heroin in which he asked to purchase some. The Court said:

To attempt to do an act does not imply a completion of the act, or in fact any definite progress toward it. Any effort or endeavor to effect the act will satisfy the terms of the law. United States v. Robles, 185 F. Supp. 82, 85 (N.D. Calif., 1960).

This position must be examined with an eye to these cases which have striven to distinguish the terms "attempt" and "endeavor," thereby forcing a definition of the former term in much the same terms as under the Dangerous Proximity Test. See Osborn v. United States, 385 U.S. 323, 333, rehearing den., 386 U.S. 938 (1966). The gravity of the violations encompassed by the statute would indicate the propriety of prosecution as an attempt for conduct which might as to other violations be considered mere preparation or endeavor.

Inasmuch as the assault provision of this statute, section (e) makes no provision for aggravated assaults (i.e., assault by use of a deadly or dangerous weapon) and since the penalty for assaults not resulting in personal injury carry such a light penalty, consideration should be given to prosecuting as an attempted killing, when a deadly or dangerous weapon is involved in an incident where no injury results.

4. Conspiracy to Kill or Kidnap a Member of Congress;
18 U.S.C. 351 (d):

"If two or more persons conspire to kill or kidnap any individual designated in subsection (a) of this section and one or more of such persons do any act to effect the object of the conspiracy, each shall be punished (1) by imprisonment for any term of years or for life, or (2) by death or imprisonment for any term of years or for life, if death results to such individual."

This provision tracks the general conspiracy statute (18 U.S.C. 371) except that it is limited to the two objects of killing or kidnaping a Member of Congress. This section does not preclude prosecution under the general conspiracy statute, but merely provides an increased penalty where the object of the conspiracy is to kill or kidnap a Congressman. See United States v. Bazzell, 187 F. 2d 878, 885 (7th Cir.) cert. den., 342 U.S. 849 (1951). Conspiracy to kill or kidnap the Member-of-Congress is punishable by imprisonment for any term of years or life, or by death if death results to the victim, while the maximum penalty under 18 U.S.C. 371 would be a \$10,000 fine and five years imprisonment.

5. Assaulting a Member of Congress; 18 U.S.C. 351 (e):

"Whoever assaults any person designated in subsection (a) of this section shall be fined not more than \$5,000 or imprisoned not more than one year, or both; and if personal injury results, shall be fined not more than \$10,000 or imprisoned for not more than ten years, or both."

Absent a statutory definition of assault the Courts have looked to the common law and have concluded that an "assault" is:

An attempt with force or violence to do a corporal injury to another; and may consist of any act tending to such corporal injury, accompanied with such circumstances as denotes at the time and intention, coupled with present ability, of using actual violence against the person. Guarro v. United States, 237 F. 2d 578, 580 (D.C. Cir. 1956).